United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

74-1462

In The

United States Court of Appeals

For The Second Circuit

In the Matter of

MELVIN LICHT,

Bankrupt.

MELVIN LICHT,

Appellant,

vs.

HERBERT L. ASH, as Trustee in Bankruptcy of the Estate of Melvin Licht, Bankrupt,

Appellee.

APPENDIX

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Attorney for Appellant
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UNITED STATES COURT OF APPEALS
FILED
JUN 28 1974
SECOND CIRCUIT

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RELEVANT DOCKET ENTRIES

NAME OF BANKRUPT/DEBTOR: LICHT Melvin

COSTANTINO, J.

DIST NO. | DIV NO | DOCKET NO: 67-2-663

CHAPTER OR SECTION: XI-Sec.322

DATE PETITION FILED: 6/8/67

DATE CLOSED:

DISCHARGE: ◇ Granted / Denied / Waived or not applied for

DATE DISCHARGED:

CHECK IF: ◇ Voluntary / Involuntary / Fee paid in installments / Corporation

OCCUPATION (Check one): ◇ Farmer / Employee / Professional / Other (Non-business) / Merchant / Manufacturer / Other (Business)

PETITION DISMISSED? ☐ YES | DATE DISMISSED | CHAPTER UNDER WHICH CASE WAS PENDING WHEN DISMISSED

NAME OF JUDGE

NAME OF REFEREE: SAMUEL J. PRICE

ADDRESS OF BANKRUPT/DEBTOR (Number and Street): 44 Bayberry Road

CITY: LAWRENCE | ZONE | COUNTY: NASSAU | STATE: N.Y.

NO ASSET CASES ONLY ◇ CLAIMS AS SCHEDULED	TOTAL	PRIORITY	SECURED	UNSECURED
	$	$	$	$

	NAMES AND ADDRESSES
ATTORNEY FOR BANKRUPT OR DEBTOR ◇	MICHAEL BERMAN 55 Liberty St., New York, N.Y. 10005 (MB 4-8711)
ATTORNEY FOR PETITIONING CREDITORS ◇	
RECEIVER ◇	
ATTORNEY FOR RECEIVER ◇	
TRUSTEE ◇	
ATTORNEY FOR TRUSTEE ◇	

CHANGES OF PRINCIPALS

DATE	PROCEEDINGS
6/8/67	Debtor's Petition, Summary of Assets & Liabilities, List of Creditors, Affidavit Pursuant to Rule XI-2 (1)
6/8/67	By Dooling, J.- Order filed referring proceedings to Hon. Manuel J.Price, Ref.; debtor to attend before said Ref. on 6/9/67 at 10:30 A.M. etc., and continuing debtor in possession,etc. (2)
6/8/67	By Dooling, J.-Order filed extending time of debtor to file schedules, statement of affairs & report of executory contracts for (10) days. (3)
6/9/67	Above papers sent to Ref.
6/30/67	Copy of schedules and statement of affairs received from Referee's Office and filed. (4)

FORM BK 74-D SEP. 1962 — UNITED STATES DISTRICT COURTS — BANKRUPTCY DOCKET — COPY

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A2

Relevant Docket Entries

7/14/67	Report of Bankruptcy Case Change-Form BK-76-dated 7/13/67 from Chap. XI to I-VII filed.
10/20/67	Copy of Amendment of Schedule A-3 received and filed. (5)
10/5/70	Referee's order for issuance of subpoena,etc. filed. (6)
7/2/71	Referee's Certificate on Review of order dated June 4, 1971 filed. ASSIGNED TO:- COSTANTINO, J. (7)
11/17/71	Before Costantino, J. - Bankruptcy Hearing - The above matter submitted on papers. Trustee reserves the right to file reply Memorandum.
11/22/71	Memorandum in Support of Petition for Review filed by Michael Berman, Atty. (returned to judge Costantino) HC (8)
1/20/72	By Costantino,J.- Memorandum opinion and order filed. The bankrupts' motions to dismiss the specifications of objection as insufficient as a matter of law are denied. The order of the Referee in Bankruptcy is affirmed. So ordered. (copy sent to each Ref) (9) HC.
6/28/73	Referee's Certificate on Review of order dated April 4, 1973 and April 17, 1973 filed. (ASSIGNED TO: COSTANTINO,J. on 7/2/71 on previous review.) ... (10)
8/15/73	Memorandum of Law in Opposition to Petitions for Review filed by Messrs. Hahn, Hessen, Margolis & Ryan.(Orders dated April 4, 1973 and April 17, 1973) (11)
9/7/73	Answering Memorandum of Law in Opposition to Petitions to Review filed by Messrs. Hahn, Hessen, Margolis & Ryan. (Reviews dated April 4,1973 and April 17, 1973) (12)
9/11/73	Before Costantino,J. Hearing on petition for review,etc. Case called. Motion argued. Decision reserved.
9/11/73	Memorandum in Support of Petition to Review Referee's order granting leave to Amend Specifications filed by Michael Berman, Attorney (13)
9/11/73	Memorandum in Support of Petition to Review Referee's Order denying Bankrupt's Discharge filed by Michael Berman, Attorney. (14)
2/14/74	By Costantino,J.- Memorandum & order filed.The report of Referee Price is affirmed and the bankrupt's discharge is denied.(See memo) copy sent to each Ref.- HC (15) (all papers on review sent to Price, J. - 2/14/74 - HC.

A3

Relevant Docket Entries

MELVIN LICHT

67-B-668

DOCKET NUMBER

DATE	PROCEEDINGS
3/11/74	Notice of Appeal filed. (from memo. and order dated 2/14/74 by Costantino,J. which denied the petition for review,etc.) (Copy mailed to U.S.C.C.A) HC (16)
4/3/74	Index to Record on Appeal filed, in triplicate.
4/3/74	Papers on appeal consisting of original papers 1-766and Docket Sheets A-C, mailed to U.S.C.C.A. HC
4/8/74	Receipt of Certified copy of Index to Receoved on Appeal received from U.S.C.C.A. and filed. (17)

FORM BK 74-E
SEPT. 1963

UNITED STATES DISTRICT COURT

BANKRUPTCY DOCKET—CONTINUATION

SPECIFICATIONS OF OBJECTIONS TO DISCHARGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

In the Matter

of

MELVIN LICHT,

Bankrupt.

In Bankruptcy No. 67B-668

SPECIFICATIONS OF OBJECTIONS TO DISCHARGE

----------X

TO THE HONORABLE MANUEL J. PRICE,
REFEREE IN BANKRUPTCY:

HERBERT L. ASH, of 67-29 215th Street, Bayside, New York, in the County of Queens, State of New York, Trustee of the Estate of Melvin Licht, the above-named bankrupt, having examined into the acts and conduct of said bankrupt, and being satisfied that probable grounds exist for the denial of the discharge of the said bankrupt, does hereby oppose the granting to said bankrupt of a discharge from his debts and specifies the following as grounds of objections:

1. The bankrupt has committed an offense punishable by imprisonment as provided under Title 18, United States Code, Section 152, in that the bankrupt (a) knowingly and fraudulently concealed from the Trustee in Bankruptcy and the creditors of the estate of John Licht, Inc. (a bankrupt in proceedings before this Court) property belonging to said estate; and (b) in contemplation of the bankruptcy proceeding

of John Licht, Inc. knowingly transferred to himself property of John Licht, Inc., to wit:

The bankrupt obtained coupons, points, premiums and/or merchandise stamps belonging to John Licht, Inc. and entitling it to various merchandise, and used same to his own benefit and account for the acquisition of, among other things, clothing, carpeting, living room furniture, dining room furniture, televisions, a typewriter, a stereo outfit, a bar and lamps without paying said corporation consideration therefor.

2. The bankrupt has committed an offense punishable by imprisonment as provided under Title 18, United States Code, Section 152, in that, in contemplation of the filing of the bankruptcy of John Licht, Inc., the bankrupt knowingly and fraudulently falsified or made a false entry in documents affecting or relating to the property or affairs of said John Licht, Inc., to wit:

(a) Entries representing accounts receivable were made in the books and records of John Licht, Inc. for merchandise which was not actually sold by it.

(b) Invoices were created for merchandise not sold or shipped by John Licht, Inc.

Specifications of Objections to Discharge

(c) Invoices were created for prices higher than the actual sales price of merchandise sold by John Licht, Inc.

(d) Sales of merchandise of John Licht, Inc. were made without proper invoices being created or proper entry being made as to the same in the books and records of John Licht, Inc.

(e) The books and records of John Licht, Inc. failed to disclose an account of John Licht, Inc. with the Royal National Bank and deposits made therein of funds belonging to John Licht, Inc.

(f) Records of sales made by John Licht, Inc. to customers in which the bankrupt had a financial interest were falsified in that they were recorded as made to false or non-existent customer names.

(g) Entries were made in the books of John Licht, Inc. representing returns of merchandise to said Company, none of which was actually received by it.

Specifications of Objections to Discharge

(h) Payments received from customers of John Licht, Inc. were credited to fictitious accounts.

(i) The books and records of John Licht, Inc. failed to reflect payments made to Gloria Takowsky, who was employed by it, and who is the sister of the bankrupt.

3. The bankrupt has failed to keep books of account or records from which his financial condition and business transactions might be ascertained, to wit:

(a) Books and records showing his receipt of merchandise and/or coupons from John Licht, Inc. as set forth in paragraph "1" hereof and the failure to reflect the income from said transactions on his tax returns.

(b) Records disclosing the source of deposits made to the bankrupt's account with Bankers Trust Company.

(c) Records disclosing the source of bankrupt's earnings as deposited in said bank account with Bankers Trust Company for various period including the period

Specifications of Objections to Discharge

from February 9, 1966 to March 4, 1966.

4. On or about December 31, 1966, the bankrupt while engaged in business as an executive and a shareholder of WONDERAMA DISCOUNT CITY, INC. and EZ FLOW DISPENSER CORP. obtained credit from Franklin National Bank for such businesses by causing to be made or published a materially false financial statement in writing in that said statement set forth that the bankrupt's assets included a savings account valued at $4,000 and mutual funds valued at $9,000 against which there appeared no liens, encumbrances, charges or security interests, whereas in truth and in fact the aforesaid assets had been pledged to a bank as security for a loan made to the bankrupt previous to the date of the said financial statement.

5. On or about December 31, 1966, the bankrupt while engaged in business as an officer of John Licht, Inc. obtained credit for such business by causing to be made or published a materially false financial statement for said business in writing which statement purportedly set forth the financial condition of such business and the assets and liabilities thereof, whereas in truth and in fact such financial statement understated the cash receipts of said business, failed to reflect accurately the returns and/or credits on merchandise sold by

Specifications of Objections to Discharge

said business and failed to disclose as an expense of said business salary paid to the bankrupt's sister, Gloria Takowsky.

Dated at New York, this 5th day of March, 1970.

Herbert L. Ash
HERBERT L. ASH, Trustee

HAHN, HESSEN, MARGOLIS & RYAN, ESQ.
Attorneys for Trustee
Office & P. O. Address
350 Fifth Avenue
New York, N. Y. 10001

By Harry A. Margolis

A10

NOTICE OF MOTION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

In the Matter

of

MELVIN LICHT,

Bankrupt.

In Bankruptcy No. 67-B-668

NOTICE OF MOTION FOR ORDER, PURSUANT TO RULE 15 OF THE FEDERAL RULES OF CIVIL PROCEDURE, TO AMEND SPECIFICATIONS OBJECTING TO DISCHARGE TO CONFORM TO EVIDENCE

----------X

S I R S :

PLEASE TAKE NOTICE, that upon the annexed petition of Frederick C. Stern, sworn to the 24th day of October, 1972, and upon all the papers and proceedings heretofore had herein, the undersigned will move before the Honorable Manuel J. Price, Referee in Bankruptcy, at the Court Room of said Referee, Room 343, 225 Cadman Plaza, Brooklyn, New York, on the 2nd day of November, 1972 at 10:00 a.m. in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order pursuant to Rule 15 of the Federal Rules of Civil Procedure, amending Specification 1(B) and Specification 2 of the trustee's Specifications objecting to discharge to conform to the proof and evidence and for such other and further relief as may be just and proper.

Dated: New York, New York
October 24, 1972.

Yours, etc.,

HAHN, HESSEN, MARGOLIS & RYAN
Attorneys for Trustee

All

Notice of Motion

By: Frederick C. Stern
Frederick C. Stern
350 Fifth Avenue
New York, New York 10001

TO: MICHAEL BERMAN, ESQUIRE
55 Liberty Street
New York, New York 10005

AFFIDAVIT OF FREDERICK C. STERN IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X

In the Matter

of

MELVIN LICHT,

Bankrupt.

In Bankruptcy No. 67-B-668

AFFIDAVIT IN SUPPORT OF MOTION TO AMEND SPECIFICATIONS OBJECTING TO DISCHARGE

----------X

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

FREDERICK C. STERN, being duly sworn, deposes and says:

1. That he is an attorney at law licensed to practice in the State of New York and admitted to practice in the United States District Court for the Eastern District of New York and is associated with the law firm of Hahn, Hessen, Margolis & Ryan, of 350 Fifth Avenue, New York, New York 10001, attorneys for Herbert L. Ash, trustee herein, and is the attorney in this office most familiar with the facts and circumstances of the within action.

2. This affidavit is made in support of the trustee's motion to amend Specification 1(B) of his specifications objecting to the discharge of the bankrupt, to read as follows: "In contemplation of the bankruptcy proceeding of

John Licht, Inc., the bankrupt knowingly and fraudulently transferred to himself property of John Licht, Inc., consisting of the same coupons, points, premiums, etc., as set forth in Item (a) above", and to amend Specification 2 to read as follows: "An offense punishable by imprisonment as provided under Title 18, United States Code, Section 152, in that after the filing of the bankruptcy proceeding of John Licht, Inc., or in contemplation thereof, the bankrupt knowingly and fraudulently falsified or made a false entry in documents effecting or relating to the property or affairs of said John Licht, Inc., to wit. . ."

3. General Order 37 of the General Orders in Bankruptcy provides as follows:

> "In proceedings under the Act the Rules of Civil Procedure for the District Courts of the United States shall, insofar as they are not inconsistent with the Act, or with these General Orders, be followed as nearly as may be. But the Court may shorten the limitations of time prescribed so as to expedite hearings, and may otherwise modify the rules for the preparation or hearing of any particular proceeding."

4. Rule 15(B) of the Federal Rules of Civil Procedure, provides as follows:

> "When issues not raised by the pleadings are tried by express or implied consent of the parties they shall be treated in all respects as if they had been raised in the pleadings. Such

> amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; if failure so to amend does not effect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the Court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the Court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The Court may grant a continuance to enable the objecting party to meet such evidence".

5. The bankrupt has contended, in his memorandum in opposition to the specifications objecting to discharge, that Specification 1(B) is deficient as a matter of law because it fails to allege that the bankrupt "fraudulently" transferred property to himself as alleged in the specification. The bankrupt claimed that the merchandise obtained through the use of premium points belonging to John Licht, Inc., represented additional compensation for his labors as an employee of John Licht, Inc. Through his own testimony, the bankrupt has admitted that he never reported the receipt of the items of personal property received through the cashing in of premium points as income on his personal income tax for the years 1966 and 1967. See Hearing Transcript of June 9th, page 77 and

June 16th, page 39. He also admitted that the payroll records of John Licht, Inc., by whom the bankrupt was employed did not show the merchandise received through the premium point programs as additional compensation to the bankrupt. See Transcript of June 16th, page 64. The above constituted fraud in two important respects. First, the bankrupt attempted a fraud upon the United States by attempting to conceal income to avoid paying income tax on it. Secondly, by failing to list these transfers on the books of John Licht, Inc., as salary or wages paid to the bankrupt, John Licht, Inc., was unable to deduct these transfers as expenses and deductions against gross income. This increased the income tax liability of John Licht, Inc., and reduced the assets available for distribution to general creditors.

6. The bankrupt also contends that Specification 2(G) is defective as a matter of law because it fails to allege that the act complained of was committed after the filing of the bankruptcy proceeding. The testimony of the bankrupt on the subject of the false credit memoranda which were created on June 20, 1967 and entered on the books of John Licht, Inc., runs from page 26 through page 40 of the transcript of the hearing of August 9, 1972. Trustee's Exhibit 26, 27, 28, 29, 30 and 31, which represented copies of the fraudulent credit memos, were admitted in evidence without objection. The bank-

rupt's attorney, Mr. Berman, made one objection to a question as to whether or not these acts took place during the Chapter XI proceeding, which objection was overruled by the Court. Whether or not the bankrupt admitted that the act complained of occurred during the pendency of a Chapter XI proceeding of John Licht, Inc., is irrevelant. The record is clear that the credit memoranda were issued on June 20, 1967 and the Court may take judicial notice of the fact that a petition for an arrangement pursuant to Chapter XI was filed by John Licht, Inc., on June 1, 1967. The evidence is clear that the bankrupt violated that provision of Title 18, United States Code, Section 152 which provides that: "Whoever, after filing of a bankruptcy proceeding or in contemplation thereof, knowingly and fraudulently conceals, destroys, mutilates, falsifies, or makes a false entry in any document effecting or relating to the property or affairs of a bankrupt; . . ."

7. The bankrupt can claim no disadvantage or surprise as a result of the admission of this evidence because he was forewarned in the trustee's answers to his own interrogatories which were dated February 8, 1971. Interrogatory No. 11 and the answer thereto and the supplementary answer dated May 26, 1972 amply described the specific credit memoranda, the amounts and the customers to whose benefit they were made out.

8. The bankrupt, on page 18 of his memorandum

in opposition to the specifications objecting to discharge, admits that the creation of the credit memoranda would have been a violation of the relevant section of Title 18, United States Code, Section 152 and points out to the Court the remedy which the trustee is now requesting.

9. The trustee respectfully contends that it would subserve the ends of justice to permit the amendment to the specifications which are requested herein to conform to the evidence which has already been admitted in open Court. The requested amendments would in no way surprise the bankrupt or require the taking of additional proof.

WHEREFORE, it is respectfully requested that the specifications objecting to discharge be amended as in the proposed amended specifications attached hereto and that the Court grant such other and further relief as may be just under the circumstances.

Frederick C. Stern
FREDERICK C. STERN

Sworn to before me this
24th day of October, 1972.

Frances C. Gebbia
Notary Public

FRANCES C. GEBBIA
Notary Public, State of New York
No. 41-6475793
Qualified in Queens County
Commission Expires March 30, 1974

PROPOSED AMENDED SPECIFICATIONS OF OBJECTIONS TO DISCHARGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X

In the Matter of MELVIN LICHT, Bankrupt.

In Bankruptcy No. 67-B-668

----------X

TO THE HONORABLE MANUEL J. PRICE,
REFEREE IN BANKRUPTCY:

HERBERT L. ASH, of 67-29 215th Street, Bayside, New York, in the County of Queens, State of New York, Trustee of the Estate of Melvin Licht, the above-named bankrupt, having examined into the acts and conduct of said bankrupt, and being satisfied that probable grounds exist for the denial of the discharge of the said bankrupt, does hereby oppose the granting to said bankrupt of a discharge from his debts and specifies the following as grounds of objections:

1. The bankrupt has committed an offense punishable by imprisonment as provided under Title 18, United States Code, Section 152, in that the bankrupt (a) knowingly and fraudulently concealed from the Trustee in Bankruptcy and the creditors of the estate of John Licht, Inc., (a bankrupt in proceedings before this Court) property belonging to said estate; and (b) in contemplation of the bankruptcy proceeding

Proposed Amended Specifications of Objections to Discharge

of John Licht, Inc., knowingly and fraudulently transferred to himself property of John Licht, Inc., to wit:

The bankrupt obtained coupons, points, premiums and/or merchandise stamps belonging to John Licht, Inc., and entitling it to various merchandise, and used same to his own benefit and account for the acquisition of, among other things, clothing, carpeting, living room furniture, dining room furniture, televisions, a typewriter, a stereo outfit, a bar and lamps without paying said corporation consideration therefor.

2. The bankrupt has committed an offense punishable by imprisonment as provided under Title 18, United States Code, Section 152, in that, after the filing of a bankruptcy proceeding by John Licht, Inc., and in contemplation thereof, the bankrupt knowingly and fraudulently falsified or made a false entry in documents affecting or relating to the property or affairs of said John Licht, Inc., to wit:

(a) Entries representing accounts receivable were made in the books and records of John Licht, Inc., for merchandise which was not actually sold by it.

(b) Invoices were created for merchandise not sold or shipped by John Licht, Inc.

(c) Invoices were created for prices higher than the actual sales price of merchandise sold by John Licht, Inc.

(d) Sales of merchandise of John Licht, Inc., were made without proper invoices being created or proper entry being made as to the same in the books and records of John Licht, Inc.

(e) The books and records of John Licht, Inc., failed to disclose an account of John Licht, Inc., with the Royal National Bank and deposits made therein of funds belonging to John Licht, Inc.

(f) Records of sales made by John Licht, Inc., to customers in which the bankrupt had a financial interest were falsified in that they were recorded as made to false or non-existent customer names.

(g) Entries were made in the books of

Proposed Amended Specifications of Objections to Discharge

John Licht, Inc., representing returns of merchandise to said Company, none of which was actually received by it.

(h) Payments received from customers of John Licht, Inc., were credited to fictitious accounts.

(i) The books and records of John Licht, Inc., failed to reflect payments made to Gloria Takowsky, who was employed by it, and who is the sister of the bankrupt.

AFFIDAVIT OF MICHAEL BERMAN IN OPPOSITION TO MOTION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X

In the Matter

of

MELVIN LICHT,

Bankrupt.

In Bankruptcy
No. 67B668

----------X

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

MICHAEL BERMAN, being duly sworn, says:

I am the attorney for the bankrupt herein and submit this affidavit in opposition to the extraordinary motion made by the trustee to amend his specifications of objections, after the submission of the case to the Court and then to conform the amended specifications to the proof and evidence heard on the trial.

By order of this Court, the last date to file specifications of objections to the bankrupt's discharge, was fixed as the 13th day of September, 1967.

By subsequent orders obtained by the trustee over a period of two and one-half years, the time to file specifications of objections was extended until specifications of objections were filed on March 5, 1970.

The facts which form the basis of the specifications were obtained in 21a examinations of the bankrupt, held in July, August and September, 1967. No new or relevant facts have come into existence or have been ascertained since that time and certainly not since the filing of the specifications on March 5, 1970.

The law is clear that amendments to specifications must be made with due diligence and that no new specifications may be filed after the time fixed for the filing of specifications.

AS TO SPECIFICATION "1b"

The trustee seeks to amend specification "1b" by adding thereto the word "fraudulently", to the said specification. This amendment is sought after the time to file specifications of objections expired in March, 1970 and after this case has been heard and submitted to the Court for decision.

At the hearing before this Court, held on June 16, 1972, I moved to dismiss specification "1b" and the Court reserved decision on that motion. (pp. 34, 35, 36)

The trustee's application to conform the specifications to the proof is based upon Rule 15 of the Federal Rules of Civil Procedure.

Under General Order 37, the federal rules are applicable to bankruptcy proceedings only "insofar as they are not inconsistent with the Act, or with these General Orders".

It will be shown in the memorandum submitted herewith, that Rule 15 is not applicable to amending and filing new specifications of objections.

The application to amend after the submission of the case to the Court, should be denied in all respects.

AS TO SPECIFICATION "2g"

The trustee seeks to add a new specification at this late date.

Specification "2g", as alleged, charges the bankrupt with having made false entries in the books and records of John Licht, Inc., in contemplation of the bankruptcy proceeding.

The new specification seeks to charge the bankrupt with having made false entries in the books and records of John Licht, Inc., subsequent to the filing of the bankruptcy proceedings.

The trustee now seeks to add the new specification to conform to the testimony and proof offered at the hearing.

The law is clear that adding a new specification after the time to file specifications has expired and after the submission of the case to the Court, cannot be permitted.

At the haring before this Court, held on August 9, 1972 and at the conclusion of proof offered by the trustee, I stated as follows:

"MR. BERMAN: I was going to move to dismiss all of 2". (p. 100)

Mr. Stern, the attorney for the trustee, requested that he get time within which to offer additional proof and the Court indicated that in any event, it was going to reserve decision until briefs were submitted. (pp. 101, 102- 8/9/72).

At the conclusion of all of the hearings and upon the final submission of all testimony, the Court requested that both parties submit briefs and refrain from making any oral motions and both parties were given four or five weeks within which to submit such briefs. (p. 67- 8/18/72).

Under the circumstances, there was no necessity for objecting to testimony which was being offered in support of specification "2", until the conclusion of the hearing. As heretofore indicated, at the conclusion of the hearing, the Court reserved decision on all motions until written briefs

were submitted.

Under all of the circumstances, the application of the trustee should be denied in all respects.

Sworn to before me, this

1st day of November, 1972.

Michael Berman

M. DAVID GRAUBARD
Notary Public, State of New York
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TRIAL TRANSCRIPT OF JUNE 9, 1972

Pages 4-line 11 to page 50, line 18

Q Mr. Licht, are you employed now?

A Yes.

Q By whom are you employed?

A Essex Warehouse Distributors.

Q How long have you been employed by Essex?

A Four and a half years.

Q Have you been with Essex since you left Republic Battery?

Q Yes.

Q Since the time that you left the employ of John Licht, Inc., have you had any other employment other than those two companies?

A No.

Q What was your position with John Licht, Inc.?

A Manager.

Q Did you have a corporate office position?

A Vice-President.

Q That was a corporate entity, John Licht?

A Yes.

THE REFEREE: Is that John Licht, Inc.?

MR. STERN: Yes sir.

Q Now, prior to the bankruptcy of John Licht Inc., did that company have any promotional plans with any of its suppliers regarding either earning or purchase by the bankrupt corporation of coupons which could be redeemed for merchandise?

A Yes.

Q Did it have such a plan with the Thermoid Division of the H. K. Porter Company?

A Yes.

Q Now, in connection with the plan with the H. K. Porter Company, did the bankrupt John Licht, Inc. obtain certain coupons, as a result of that plan?

A Yes.

Q And was any merchandise which had been --, merchandise or personal property of any kind which had been obtained through those coupons taken by you and used to your own purposes?

A Yes.

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MR. BERMAN: May I have that last question read, please?

(Last question read by the Reporter.)

REPORTER: " And was any merchandise which had been --, merchandise or personal property of any kind which had been obtained through those coupons taken by you and used to your own purposes?

A : Yes. "

(End of quote)

Q Did that merchanidse include a Dial-A-Matic vacum cleaner which was obtained on or about February 8, 1967?

A It was a vacum cleaner, yes.

Q Which was obtained through the use of the these coupons?

A Yes.

Q Do you remember the approximate value of that vacum cleaner?

A No, I don't.

Q I am going to show you a document which was previously marked trustee's exhibit 9-A, for identification, of July 11, 1967, will you examine that? Can you identify what that document is?

A Well, it is a bill to the Thermoid Division H. K. Porter from the Premium House in Cleve-

land, Ohio.

Q If you look at the top, is there a shipping address on that?

A Shipped to myself at my home in Lawrence.

Q And is this the invoice of bill representing the vacum cleaner that you just described a minute ago?

A Yes.

Q If you look at the column under amount, does the figure $103.34 refresh your recollection as to the value of the vacum cleaner?

A No, not at all.

Q So that figure has no meaning?

A No, we never had any bills of prices of the merchandise.

Q But, did you have any idea of the value of the merchandise at the time you got it?

A At the time the coupons had a worth , and they were supposed to be twice the amount of the --.

Q I am talking abuut the vacum cleaner, did you have any idea?

A I am trying to explain it to you. The cou-pons had a worth of x amount of dollars, and the purchased merchandise was usually double that amount. So, if the coupon was worth $50.00, then we assume

the vacum was worth $100.00.

Q So is it your present understanding on the basis of --?

THE REFEREE: Perhaps if you show it to Mr. Berman, it may save time.

MR. BERMAN: Are you offering this in evidence?

MR. STERN: I will. Your Honor, I offer this document as Trustee's exhibit # 1.

THE REFEREE: Do you have any objections?

MR. BERMAN: No sir.

THE REFEREE: Fine.

MR. STERN: Would you like to look at it, your Honor?

THE REFEREE: No, after it's marked, I'll look at it. Mark it as trustee's exhibit #1, of today's date.

(So marked by the Court Reporter.)

MR. BERMAN: May I see it again.

MR. STERN: Here, Mr. Berman.

Continued Examination.

Q Examining this exhibit, Mr. Licht, there is is a description for a vacum cleaner, and I believe it says in amount, next to the description, $97.16.

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And there is also a description of a set of attachments, and the figure $6.20.

A That's not what it says.

Q What does it say?

A It says " Railway Express, $6.20."

Q I am sorry, then we'll restrict ourselves to the $97.16. In the light of examining that exhibit, and in view of the fact that that represents the vacum cleaner which you obtained, do you accept that the value of that vacum cleaner is $97.16?

MR. BERMAN: Your Honor, I object to the question on the grounds that the exhibit speaks for itself.

THE REFEREE: The objection is sustained.

MR. STERN: I'll take that back.

Q Did you, yourself, have no independent understanding or opinion of what the value of that item was when you received it?

A No, I did not.

THE REFEREE: Mr. Licht, when you received that or prior to the time that you received that, would you have delivered approximately $50.00 worth of coupons? Is that the way it works?

A Well, the item would have so many coupons for the item, and I don't recall right now how much

each coupon was worth.

THE REFEREE: Was it approximately double the value?

A Right, it was double

THE REFEREE: In other words, if the vacum cleaner was worth $100.00, you would have to deliver to the company fifty coupons?

MR. BERMAN: No, two hundred, your Honor.

THE REFEREE: I see, each coupon was worth only half the value.

A Well, that was usually the rule of thumb, your Honor, but there was various different rates.

THE REFEREE: In this instance to get a dollar worth of merchandise, you had to submit $2.00 worth of coupons?

A Right.

MR. BERMAN: No, two coupons, the coupons were worth fifth cents.

THE REFEREE: Is that so? Then you submit two coupons?

MR. BERMAN: That's right.

Q Now, on or about January 25, 1967, did you obtain a bedroom set through these M. K. Porter coupons?

A A bedroom set?

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Q That's correct.

THE REFEREE: Do you have an invoice for it?

MR. STERN: Yes, your Honor.

THE REFEREE: My suggestion is this, do you have a whole series of these?

MR. STERN: Yes, your Honor.

THE REFEREE: Why don't you show them to Mr. Berman, and perhaps, we may obviate the necessity of educing testimony on each one. Let him take a look at them. I believe that they were marked at the examination.

MR. STERN: They were, your Honor,

MR. BERMAN: Your Honor, I would like the witness to look at them too, and testify as to whether he actually received them.

THE REFEREE: By all means. But, I'd like you to look at them first. Then let Mr. Licht look at them and if they were received by him, let him so state. Perhaps they can all go in as one.

MR. BERMAN: Would you look at these, Mr. Licht?

MR. STERN: I think before I ask him, I will offer them in evidence.

THE REFEREE: No, why don't you ask Mr.

Licht if he recalls receiving these items.

MR. STERN: All right.

Q Mr. Licht, looking at the document previously identified as trustee's exhibit #9B for identification, of July 11,1967, did you receive the merchandise on that document?

A Yes sir.

Q And similarly, with a document previously identified as exhibit #9C of that date, did you receive the item on that invoice?

A Yes

Q And examining this document previously identified as trustee's exhibit #9D of that date, did you receive that merchandise?

A Yes

Q This one, which was previously identified as trustee's exhibit #9E is for carpeting for Mr. John Lciht, do you know of your own knowledge, whether or not Mr. John Licht received that carpeting as indicated on that invoice?

A Yes, he did.

THE REFEREE: May we suspend for a moment off the record.

(Discussion off the record.)

THE REFEREE: Are you trying both sets

of specifications? You may proceed any way you wish, but I'd like to keep the matter straight in my own mind.

MR. STERN: Well, I made it a point.

MR. BERMAN: I suggest that he keeps them separate.

THE REFEREE: I suggest that you keep the John Licht, and the Melvin Licht matters separate.

MR. STERN: Since, we've already alluded it --.

THE REFEREE: You've alluded to it, but you don't have to offer it.

MR. STERN: That's right.

Q Will you examine this document previously identified as trustee's exhibit #9F, and tell the court whether you received the carpeting which is indicated on that document?

A Yes.

Q The last exhibit in this group was previously identified as trustee's exhibit #9G of July 11, 1967, and it is for ten 11 ins. T. V. sets, did you personally receive for your own use any of those T. V. sets?

A No, I didn't.

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Q Do you know who did receive those ten T. V. sets?

A They were shipped into the company.

Q And what happened to them after they were shipped into the company?

A They were sold through the company or given out as premiums in the company.

Q With the exception of those T. V. sets, you did receive for your own use, all the merchandise on the other documents you examined with the further exception of the carpeting which you believe went to your father, is that correct?

A Yes.

MR. STERN: I would like to have these documents marked as trustee's exhibits, in seriatum, following first?

MR. BERMAN: May I ask the witness a question on a voir dire?

THE REFEREE: Yes.

MR. BERMAN: Now, Mr. Licht, the merchandise that you testified that you received as indicated on these invoices, can you tell me the dates when you received them? Were the dates that are indicated here, or were they other dates?

MR. STERN: Your Honor, --.

THE REFEREE: No, I am going to allow it. We'll see what Mr. Licht replies.

MR. STERN: Is that question aimed at the validity of the document?

THE REFEREE: It could be, let's hear what Mr. Berman has in mind.

MR. LICHT: Yes, on the shipping dates would be when I would probably have received them. They have an invoice date and a shipping date here. And I would say around the shipping date is the date I would have received them, maybe a week later or so.

MR. BERMAN: All right. I have no objections. Except that I do object to the exhibits which Mr. Licht says he did not receive.

MR. STERN: I didn't plan to offer them.

THE REFEREE: That hasn't been offered.

MR. BERMAN: Well, he had them together.

MR. STERN: I thought I had taken pains to separate them.

MR. BERMAN: No, you hadn't.

MR. STERN: I'll keep them apart.

THE REFEREE: Fine, those are the invoices for merchandise receive by Mr. Licht, and they do not include merchandise that were sent to

John Licht, his father.

MR. STERN: They do not include the carpeting to John Licht, personally, or the ten color T. V. sets that were delivered to the company.

MR. BERMAN: I have one other objection, your Honor.

THE REFEREE: Yes?

MR. BERMAN: I object to the introduction into evidence of the invoice which refers to a special three-piece sofa, upon the grounds that this is indicated as having been shipped on June 8, 1966, and in answer to the trustee's interrogatories, the trustee alleged that the bankrupt received a three-piece sofa with two chairs on June 8, 1967. So I think he is barred from offering anything which was received by the bankrupt on June 8, 1966, a completely different day than the date stated on the --. We relied on these answers, and I therefore object to it.

THE REFEREE: Was that a typographical error?

MR. STERN: I am sure it was a typographical error, your Honor.

THE REFEREE: I will allow it.

MR. BERMAN: I except, your Honor.

MR. STERN: If you want, I can go into testimony in the previous examinations which would indicate that it was.

MR. BERMAN: Well, I am sorry, your Honor these interrogatories and answers are used for the purpose of binding the parties.

THE REFEREE: I agree.

MR. BERMAN: Now, I think he was bound by this.

THE REFEREE: He is.

MR. BERMAN: But, your Honor has overruled my objections.

THE REFEREE: I have.

MR. STERN: Can we get these marked?

THE REFEREE: Mark them.

MR. BERMAN: Are they going to be marked as one exhibit?

THE REFEREE: Is there any reason why you want to mark seriatum?

MR. STERN: I think it makes it easier to handle.

THE REFEREE: I was going to suggest that we have them marked 2 A, B, C, and so on, but we can can mark them.

MR. STERN: I think it is the same thing.

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MR. BERMAN: Just be careful which one you are marking as you go.

MR. STERN: We have an invoice number 37034 which will be marked as trustee's exhibit #2.

MR. BERMAN: What is it?

MR. STERN: It is the special three-piece sofa with the two chairs, two swivel chairs.

(So marked by the Court Reporter.)

MR. STERN: Next is invoice number 39299, for two chairs. That will be trustee's exhibit #3.

(So marked by the Court Reporter.)

MR. STERN: Next is invoice number 38738, for carpeting which will be trustee's exhibit #4.

(So marked by the Court Reporter.)

MR. STERN: Next is invoice number 45470, for a bedroom set corner table, and six shutters and frames, which will be trustee's exhibit #5.

(So marked by the Court Reporter.)

MR. STERN: Your Honor, Counsel for the bankrupt, with regard to the first exhibit, had suggested that the exhibits speak for themselves. I assume that he takes the same position with regard to all the others.

MR. BERMAN: Not my position, the legal position. It is the law.

THE REFEREE: So that you are not going into the price as set forth on each one?

MR. STERN: That's right, your Honor. And I believe that the witness also testified, with regard to exhibit #1, that he had received the merchandise within ammatter of a week or soof of the shipping date, and I assume the same would hold true for the others, is that correct?

A Yes.

CONTINUED EXAMINATION

BY MR, STERN:

Q Did John Licht, Inc., have a point program with the A. C. Division of General Motors Corporation?

A Yes.

Q Could you explain for the court how that program worked?

A Well, the program worked in two different ways. One way, they gave you a merchandise goal of purchases, of which if you earned them, then you earned the points.

THE REFEREE: Excuse me. Let me understand you, and tell me if this is the way it works. You have a quota for a certain amount of merchandise that had to be sold, is that it?

A Yes

THE REFEREE: And if you sold that amount of merchandise, you would be given a certain number of points, is that it?

A I will clarify it more, your Honor.

THE REFEREE: Yes, please do.

A Say we had an objective of $100,000.00, they would say that you are entitled to a hundred thousand points, I don't recall the exact --. And they would bill us for half a cent a point. Now, if we reached the $100,000.00, and went so much percentage of the $100,000.00, we would earn back the cost of the points down to a quarter percent. So actually if we did $200,000.00, the points would wind up costing us a quarter percent.

THE REFEREE: I see.

A They usually set up on what we would participate to earn them at a quarter percent. Then, the second way we would earn them is by buying certain goods, which we would be able to purchase goods at a third a percent, or different fractions of the same. If we bought so many oil filters, they'll buy so many points at such and such a price, if we bought so many spark plugs, they'll buy so many points at such and such a price.

THE REFEREE: A point was worth a penny?

A A point had a so-called retail value of a penny, but it really wasn't. But at a quarter percent or a third a percent, it was a good purchase.

Q Aside from what these points would cost you, take the points that you got for a quarter percent, they would cost you a quarter of a cent?

A That's right.

Q When I say you, I mean John Licht, Inc.

A Yes.

Q Now, what would the purchase value of those points be? In other words, what could you get in goods and merchandise, what value of merchandise for each point?

A If it is worth a quarter of a cent, so for every point I can get a penny's worth of merchandise for a quarter of a cent.

THE REFEREE: In other words, if you had a hundred cents, you'd have a dollar, is that so?

A That's correct.

THE REFEREE: You would then be able to buy a hundred dollars worth of merchandise, and that hundred dollars worth of merchandise actually cost you twenty five dollars, by reason of the fact

that you purchased the points at a quarter of a cent a piece, is that it?

A That's right, your Honor.

Q Now, was this arrangement pursuant to some kind of written agreement to a contract between John Licht, Inc. and General Motors?

A I don't think there was any contract, I am not sure, but I don't think there was any contract.

Q Was there any agreement or understanding between John Licht, Inc. and the A. C. Division of General Motors as to what the points or the merchandise purchased were to be used for?

A No.

Q Was it to be used for sales promotional purposes?

A We used it for sales promotional purposes.

Q Was it supposed to be used that way?

A Yes, part of it.

Q Was it supposed to be used for sales promotional purposes with the sales employees of John Licht, Inc.?

A If we sold as desired, it could be.

Q Was it supposed to be used for sales?

A If we sold as desired, it could be.

Q Was there any restrictions on the uses to which that could be put?

A No.

MR. STERN: If your Honor will bear with me for a while.

THE REFEREE: Go right ahead.

MR. STERN: Mr. Licht, do you remember testifying at a hearing before Referee Price on September 22, 1967?

A Yes.

MR. STERN: Do you remember being asked these questions, and giving these answers? Quote:

"Q What was the purpose of these prize participation agreements with the A. C. Division?

A There was incentive in reaching quotas to reach prize points.

Q In other words, as indicated in paragraph five of the top agreement,: " we understand and agree that all funds committed for the T & P package ordered above, would be used for the express purpose of staging internal sales contests to A. C. products" Is that the purpose of this prize point arrangement?

A Partially.

Q What was the other partial part for?

A We gave them to customers also.

Q In other words, it was to promote sales of A. C. products by your sales force, and by your customers to buy more A. C. products, is that right?

A That's right. "

Q Do you remember being asked those questions and giving those answers?

A Yes.

Q Does that refresh your recollection now as to what the purpose of what those prize points was?

A I answered that before, that's what I told you before. I know what they were for. I told you in the last answer.

Q Well, does that refresh your recollection that that was the only purpose for which they were for?

A No, that wasn't what -.

MR. BERMAN: Your Honor, I object to it on the ground that the witness has answered the question in the manner indicated in the testimony read by Counsel.

THE REFEREE: Counsel doesn't agree, I'll permit him to examine further.

MR. STERN: There is a question pending

do you know what the question is, or would you like it read back?

THE REFEREE: Why not have it read back?

Reporter reads last question:

"Q Well, does that refresh your recollection that that was the only purpose for which they were for?

A No. "

THE REFEREE: That was the last question.

Q Mr. Licht, I am going to show you a document that was previously identified as trustee's exhibit #1 for identification, of September 22, 1967, and ask you if you recognize what it is?

A Yes.

Q What is that?

Q This is the incentive program on the quota based on the earning back of prize points.

Q Does your signature appear anywhere on that?

A Yes, it does on the bottom.

Q And that is your signature?

A Yes.

MR. STERN: I plan to offer that into evidence, Mr. Berman. Do you want to have a look at it?

THE REFEREE: Mark it, have you any objections?

MR. BERMAN: No objections, your Honor.

MR. STERN: Mark it as trustee's exhibit #6.

(So marked by the Court Reporter.)

MR. BERMAN: Your Honor, I noticed that -- let me see the one that is marked in evidence.

THE REFEREE: That's the agreement.

MR. BERMAN: I just want to see whether it refers to the other side, because I notice some of these others do. They indicate something on the reverse side, but I don't see any reverse sides here. Let me see whether the exhibit has that too.

MR. STERN: I won't refer to the blank side.

THE REFEREE: If you are going to submit a document, you must submit the whole thing. These are all photo copies that you are offering.

MR. STERN: Yes, these are all photo copies.

THE REFEREE: These are all photo copies, normally I require original and photo copies to be substituted there for.

MR. BERMAN: Do you have the originals?

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MR. STERN: I'll have to look, but these have been previously marked for identification.

MR. BERMAN: Your Honor, I want to withdraw my consent to exhibit #6, on the ground that it appears in exhibit #6 that there was a reverse side, and I think the whole exhibit should be offered.

THE REFEREE: I agree with you.

MR. BERMAN: And the same seems to be true for these other documents.

THE REFEREE: Well, exhibit #6 in evidence will be marked for identification, and I'll permit you to produce the original. Change the mark for #6 in evidence to #6 for identification.

(Document previously marked in evidence by Court Reporter is now marked for identification.)

Q I direct your attention to sentence number 5 of section A, which is up in the top --.

THE REFEREE: Are you now referrring to exhibit #6 for identification?

MR. STERN: Yes, your Honor.

Q That sentence says " we understand and agree that all funds committed for the T & P package ordered above will be used for the express purpose of staging internal sales contest of A.M. products."

Does that refresh your recollection as to whather or not there was any restriction on the use that these points could be put to?

A There was no restriction on what these points could be used for.

Q Well, did you read this document before you signed it?

A There was no restriction on what these points could be used for.

THE REFEREE: That isn't the answer to the question.

A I read the document. Now, any order that was sent to A. C. --.

Q You read the document?

A Yes.

Q Before you signed it?

MR. BERMAN: I object, your Honor. The question was did that refresh his recollection.

THE REFEREE: No, the last question was did he read the document.

MR. BERMAN: All right.

Q Did you understand what you read?

A Yes.

Q Now, in connection with this A. C. point program, did you receive personally for your own use,

any goods or merchandise, personal property, through that point program?

A Yes.

Q Did you receive on or about April of 1966 a table? Well, let me show you this document which was previously identified as trustee's exhibit #3 for identification of September 22, 1967, and ask you if you recognize what that document is?

A Yes.

Q And what is that document?

A It's a table.

Q I mean what is the document?

A I am sorry, please ask the question again.

Q Do you recognize what that document is?

A Yes.

Q What is it?

A It's a purchase order for a table.

Q Is this a purchase order to a company call-ed Maritz through the A. C. point program?

A Yes, it is.

Q And also, this says " shipped to Mel Licht, 44 Bayberry Road, Lawrence New York?

A Yes.

Q Was that your home address?

A Yes, it was.

Q And was the table described on this document received by you at your Home?

A Yes.

Q Was it used by your personally?

A Yes.

MR. STERN: I'd like to have this marked as trustee's exhibit #7.

THE REFEREE: Off the record.

(Discussion off the record.)

THE REFEREE: Is this one of those that referred to the back?

MR. STERN: No, this is a different group, your Honor.

THE REFEREE: All right.

MR. BERMAN: No, the others are the consent to agreements. These are purchase orders. May I ask a question on the voir dire?

THE REFEREE: Certainly, Mr. Berman.

MR. BERMAN: Mr. Licht, this purchase order is dated April 23, 1966, does that indicate the date when you received it?

A No, that would indicate the date that it was ordered. I might not have received it for many months after that.

MR. BERMAN: I see, I have no objection.

MR. STERN: But, you do have a recollection of having received it?

THE REFEREE: He so testified.

A Yes.

MR. BERMAN: This is exhibit #7 in evidence?

MR. STERN: It has invoice number 27633 for further identification.

(So marked by the Court Reporter.)

Continued Direct Examination:

Q There is a figure in the column entitled " part-number " of sixty thousand, four hundred, do you see that there?

A Yes.

Q Does that represent the number of points that were required for this order?

A Yes.

Q And could you reduce that to a cash value for the court?

A $150.00.

Q Is that what they cost John Licht, or is that what they were worth in purchasing power?

A That's what they cost John Licht.

Q So they were worth more in purchasing power, is that correct?

A That's right.

Q They would be worth approximately $300.00, is that so?

A That's right.

Q Now, I show you a purchase order, number 2776, dated May 5, 1966, to the Maritz Company which has been previously identified as trustee's exhibit #4 for identification, of September 22, 1967, and ask you if you recognize that?

A Yes.

Q What is that?

A Purchase orders for various different items.

Q This is a two page document, is that your signature on the second page?

A Yes.

MR. BERMAN: Would you please ask him if he received these items?

MR. STERN: I plan to, but I thought I'd let you look at it first. I offer this as trustee's exhibit --.

THE REFEREE: I suggest that you ask Mr. Licht whether he received them.

Q Now, we have here an instruction that says " ship to Mel Licht, 44 Bayberry Road, Lawrence, New

York. Now, that was your home address, as previously testified, is that correct?

A That's correct.

Q This document lists: undershirt size 38, a Dominion Electric tooth-brush, two desks, --.

THE REFEREE: Why don't you ask him whether he received them, or if he did receive a part of them.

MR. BERMAN: Let him look at it. Some of these items are stricken out on here, so you can't tell. Maybe he received some, and some he didn't receive.

THE REFEREE: I think the simplest way to do it would be to ask Mr. Licht if he received them.

MR. STERN: Thank you.

Q Would you examine this, and tell the court whether you received all or any of the items on that purchase order?

A What they did with this here, is they put more than one purchase order together here, your Honor. They ran copies crossing out purchase order numbers.

THE REFEREE: In other words, this is not part of the same purchase order?

A This purchase order stops right over here, I don't know what the rest of this is. This is done on this purchase order.

MR. STERN: Let me examine that again.

THE REFEREE: Off the record.

(Discussion off the record.)

Q Going again to your testimony of September 22, 1967, on page 18, do you remember being asked these questions, and giving these answers? Quote: " Q On May 5, 1966, you issued purchase order 2776 for which you bought all kinds of things, would look at it, and tell us what you bought?

A Undershirts, tooth-brush, desk lamp, typewriter, Hell Diver, slacks, Esquire slacks, sharkskin slacks, shoes, ice-bucket and toaster.

Q What is on the second page?

A Table, six chairs, a server.

Q That was all shipped to you at Lawrence Long Island, is that right?

A That's right.

Q Do you still have them, except for the under-shirts, maybe, and the tooth-brush?

THE REFEREE: And the slacks?

Q Which probably might be worn by now, but the other items, do you still have them in your

house?

A I don't have the type-writer.

Q Who has the type-writer?

A It was sold. It was ordered for somebody.

Q Who was it ordered -, who was it ordered for?

A I don't recall -, I am sorry, that type-writer I have in the house.

Q Who made this purchase order out?

A I did.

Q Is that likewise true of exhibit #3?

A Yes.

Q Is that correct you made out all of the purchase orders did you not?

A Yes. "

(End of quote.)

MR. STERN: Invoice marked trustee's exhibit #4,

Q Do you remember being asked those questions and giving those answers?

A Yes.

Q Now, is that --.

MR. BERMAN: May I see these exhibits?

MR. STERN: Sure.

Q Is that the trustee's exhibit #4 that you

identified when you were testifying?

A The top half is, not the bottom. This is all --. You have one purchase order over-lapping another and pictures made of it.

MR. BERMAN: Your Honor, I think we can accept what Mr. Licht testified to in September as the items that he received, he said so. We rest on that. Are you satisfied with that? You don't have to go any further.

THE REFEREE: It may be a question of the proof of the value of the points.

MR. BERMAN: The value, but outside of that, the items are set forth in the testimony, and Mr. Licht says that that's his testimony and we'll stay with that.

MR. STERN: Your Honor, my purpose in reading this testimony is because at that time, nearly five years ago, specific reference was made to the second page, he was questioned on the second page. He testified to receiving a table and six chairs, and a server which were on the second page. Mr. Licht was represented at that time by Mr. Berman and he made no objections to the fact that it was a photo copy or represented pages, and under the circumstances, since it was previously identified,

testified to, I move to have the whole document admitted in evidence at this time.

THE REFEREE: Is it your testimony that this document is a different --?

A Yes, it is your Honor. It definitely is.

THE REFEREE: Wait a minute. Is it a different document from the one that was shown to you on September 22, 1967? Is it your testimony that those items listed on the bottom were not included?

A I don't know, your Honor.

THE REFEREE: Except that you didn't testify about --, you weren't even asked about the Cargos magazine pedestal with K-68 gallery, in that testimony. You weren't asked about the 498 Cargos French Provincial Refectory table, they only asked you about these items. Off the record.

(Discussion off the record.)

THE REFEREE: It does appear, really, as though this was part of this one, if it was admitted in error. If you stand on the specific items, that's one thing. Mr. Berman will concede that he received those items that he testified to at the last hearing.

MR. BERMAN: These were marked for identification, anyway. They weren't in evidence.

THE REFEREE: It was during first meeting.

MR. BERMAN: One or the other, so it doesn't bind us in any way. I'll have to object to it on the ground that it doesn't appear to be the best evidence. It is not the original document. There has to be several documents, regardless of the fact that it was marked for identification.

MR. STERN: I'll withdraw this in order to -.

THE REFEREE: I suggest that you attempt to get the original document.

MR. STERN: I will attempt to get it.

THE REFEREE: Do you want to mark this for identification?

MR. STERN: We'll mark it for identification, in seriatum, the next digit number.

MR. BERMAN: Is that 2776 that you are talking about?

MR. STERN: Yes.

THE REFEREE: Mark it as exhibit #8 for identification.

(So marked by the Court Reporter.)

Q But, you do have a present recollection of having received undershirts, a tooth-brush, a desk-lamp, a type-writer, Hell-Diver, various kinds of slacks, shoes, an ice-bucket, a toaster, and a table with six chairs, and a server, purchased through the

Maritz Company, as part of this A. C. point program?

A Yes.

Q And that was delivered to your own house and used for your personal use?

A Yes.

THE REFEREE: Would you like a few minutes to look tiis over?

MR. STERN: Yes, your Honor.

THE REFEREE: We'll take a ten minute recess.

(Time noted is 11:15 A. M. , whereupon a ten minutes recess was taken.)

THE REFEREE: All right, Mr. Licht, will you resume the witness stand, please.

CONTINUED DIRECT EXAMINATION

BY MR. STERN:

Q Now, Mr. Licht, I show you a document previously marked Trustee's exhibit A for identification, of September 22, 1967,and ask if you recognize what that document is?

A Yes.

Q And is that another purchase order to the Mar--itz Company?

A Yes.

Q For merchandise through the A. C. point program?

A Yes.

Q Is that your signature on it?

A Yes.

Q This talked about Jockey shorts size 38, Tee shirts, and --

MR. BERMAN: I object to his reading it, your Honor, unless he offers it in evidence.

THE REFEREE: I agree with you.

MR. STERN: I offer this in evidence.

MR. BERMAN: May I see it, please?

THE REFEREE: Show it to Mr. Berman.

MR. BERMAN: I can't read the date on it, your Honor. It is very difficult to read the entire exhibit, I'll have to object to it as not being the best evidence. Because I can't read it. Would your Honor like to take a look at it? The date seems to be obliterated completely.

THE REFEREE: Yes, let me see it. It is a very poor copy.

MR. STERN: Does that have the order number on it, your Honor?

THE REFEREE: 2624.

MR. STERN: That's what I thought, your Honor.

THE REFEREE: Then there's another number marked which is 587554. I'll sustain the objection.

MR. STERN: Your Honor, this was previously identified and testified to, in the testimony. All of us change and get older, and I suppose that Mr. Berman's vision isn't what it was five years ago as mine isn't.

THE REFEREE: Well, except for this, that at the time when it was offered, it was only marked for identification, and it was part of a general examination of Mr. Licht. And that was not an adversary proceeding.

MR. STERN: Yes, I understand your Honor.

THE REFEREE: We're now in specifications of objection which which are quite another matter.

MR. STERN: I'd like to mark that for identification.

THE REFEREE: All right, mark it as exhibit #9, please, for identification.

(So marked by the Court Reporter.)

Examination continued:

Q Mr. Licht, looking at exhibit #9 for identification, did you receive for your own use shorts and shirts?

A Yes.

Q And a lamp?

A Yes.

Q All of the items on that order number 2624 was shipped to you at your home on Bayberry Road in Lawrence, is that correct?

A Yes.

MR. BERMAN: This is a purchase order. What I would like to find out is the date when these items were ordered. That is what I'd like to know. He is referring to exhibit #9 for identification.

MR. STERN: All right.

Q Do you remember when you received those items?

MR. BERMAN: No, when it was ordered.

Q Do you remember when it was ordered?

A No, I don't remember.

Q Do you remember when you received it?

A No, I don't remember.

THE REFEREE: Why don't you take a look at it and see if you can make out the date?

Q Was it some time in June of 1966?

MR. BERMAN: Excuse me, maybe I have something. There's a stamp on here. It looks like some date in '66..

MR. STERN: June 1966?

MR. BERMAN: Would you like to look at it?

MR. STERN: It looks to me to be June 23,

1966. There's a circular stamp up on top.

A That would be the date that they received it.

THE REFEREE: Maritz?

A Yes, your Honor.

THE REFEREE: In other words, that's the date when Maritz received the order.

A Yes, that's when Maritz received the order.

Q And you would have received the merchandise some days or weeks afterwards?

A Usually around a month after on small orders like this.

Q So you would have received this approximately July or August of 1966?

A Latter part of July or the early part of August.

Q I show you another purchase order, previously identified as trustee's exhibit #13 for identification, of September 22, 1967 --.

MR. BERMAN: What is that number.

MR. STERN: Let me see, there's a number 528156.

A That's not my purchase order number.

Q That is not your purchase order number, but it is a number which is on here, is that correct?

A Yes.

Q And this is John Licht, Inc. stationery?

A That's right.

Q There is your own purchase order number, but it seems to be obscured. The first two digits are numbers 2and 7, is that correct?

A That's right.

Q Is that your signature on the bottom of that?

A Yes, it is.

Q The shipping instructions are: " ship to Mel Licht, 44 Bayberry Road, Lawrence"?

A Yes, it is.

MR. BERMAN: Is there a date on it?

MR. STERN: Off the record.

(Discussion off the record.)

MR. STERN: It seems to be back in 1967, we couldn't make out the date on this one.

THE REFEREE: Is that so?

MR. STERN: Yes, so we'll go on. I guess you will have a running objection to this.

MR. BERMAN: Yes, I am going to object to it.

MR. STERN: Your Honor, I want to mark this for identification.

THE REFEREE: That's exhibit #10 for identification, then.

(So marked by the Court Reporter.)

Q Mr. Licht, there's a notation on Trustee's exhibit #10 for identification which says - J-1757, and then under it is 4-30-66, does that refresh your recollection as to when you --. First let me ask you did you receive the items on that, the items indicated on that exhibit? I believe it is six chairs.

A Yes.

Q You received those items?

A Yes.

Q And does the marking 4-30-66 refresh your recollection as to when you received them?

MR. BERMAN: The question is not when he received them, but when he ordered them. This is a purchase order. I want to know when this purchase order was sent out.

Q Does that refresh your recollection as to when it was ordered?

A No, that's not my marking. It's the marking from the company. Maybe they received it on that day, the purchase order, or maybe they entered it on that day, the delivery, I don't know.

Q Well, based on your experience with Maritz, at that time, how long from the time you sent them an order would they receive it?

A It all depends on what you ordered. I've

waited as much as a year on some furniture.

Q Well, I mean not in terms of when you got delivery, but how soon after you ordered it, would they receive the order?

A How soon would Maritz receive the order?

Q Yes.

Q How long the mail takes, three, four days.

Q In other words, if they had received this on April 30 of 1966, you would have sent it to them within days before that, is that it?

A If that is their receiving date, which I don't know if it is or not. That might be their shipping date.

Q Well, do you remember receiving the six chairs indicated on this document?

A Yes, I do.

Q And do you remember when you received them?

A No, I don't.

Q Do you remember what year?

A Well, if it is around '66 that is is marked, it is probably around '66.

Q Do you have any recollection of how long after you ordered them did you receive them?

A No, these were special orders that were made to order, so it took time.

Q Now, on the 22nd of September 1967, you testified as follows:on page 39. Quote:

" Q Look at this purchase order, John Licht number 328156, which shows the purchase of six chairs for one hundred and twenty-two,thousand, four hundred points, and it says::" ship to Mel Licht, Bayberry Road, Lawrence", is that right?

A That's right.

Q Did you receive those six chairs at your home?

Aq Yes.

Q Are they still there?

A Yes.

Q They were not sold or delivered to anybody?

A No.

Q MR. BERMAN: Do you have a date on that?

MR. MARGOLIS: The date can't be read.

Q Is this notation " J-1757, April 30,1966, does that refresh your recollection as to this item?

A What do I have to recollect about the item? It is six chairs, they are in my house.

THE REFEREE: I think Mr. Margolis is referring to the date specifically, Mr. Berman asked a question about it.

MR. BERMAN: There seems to be a date on

there.

THE WITNESS: There is a date on there.

THE REFEREE: There -, I think he is pointing out the date to you as the date when they were delivered. Would that be approximately the date they were ordered or received?

THE WITNESS: I would assume so, Your Honor, probably when they were ordered." (End of quote.)

Q Do you remember being asked those questions and giving those answers?

A Yes.

Q Does that refresh --.

A It's the same question you just asked me. I answered it the same way.

Q Does that refresh your recollection?

A No more than it did just now.

Q Do you still assume that April 30, 1966 would be approximately the date that they were ordered?

A That they were either ordered or received.

Q I show you a document previously identified as trustee's exhibit #16 for identification, of September222, 1967, and ask you if you can identify that. That has, I believe, invoice number 2643, is that correct, Mr. Licht?

A 2643, yes.

Q Can you identify that?

A There is pillows, and George Washington bedspreads, and something that's twin-size.

Q Is that a purchase order?

A Yes, it is a purchase order.

Q And is your signature on that purchase order?

A Yes.

Q Is there a date on that?

A 8/9/66.

Q Would that be the date that that order was made out?

A Yes. This didn't come to me, though.

MR. BERMAN: What did he say? I didn't hear him.

A That that didn't come to me, it went into the place. That wasn't for my own personal use.

Q Do you know for whose use it was?

A Probably used it for sales promotion, some customer might have ordered it.

Q I show you a document previously identified as trustee's exhibit #23 for identification, of September 22, 1967, and ask you if you can identify that?

A Yes.

Q This has number 1626 on it, and it is dated-. Is there a date on that?

A It looks like October 17, 1966.

Q Is that your signature on that?

A Yes.

Q Is there any shipping address on that?

A Well, it is blocked out, but it looks like it was shipped to me.

Q You can make out the name Licht, and what appears to be Bayberry Road, Lawrence, New York, is tha that right?

A Yes, that's right.

Q Did you receive the items which are enumerated on this shipping invoice or order form?

A Yes sir.

MR. STERN: I'd like to offer this as trustee's exhibit #11.

THE REFEREE: Show it to Mr. Berman.

MR. BERMAN: No objection.

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Q I show you a document previously identified as trustee's #18 for identification, which is purchase order number 2671, dated August 19, 1966.

A It was marked on September not today.

THE REFEREE: It was marked for identification?

MR. STERN: It was marked for identification on September 22, 1967, but the date on the document, itself, is August 19, 1966.

Q Is that your signature on there?

A Yes.

Q And what are the shipping instructions on that?

A Shipped to my home.

Q Did you receive the items on that exhibit?

A Yes.

Q Did you keep them for your own personal use?

A Yes.

Q What was the point value of those purchases?

A $125.00.

MR. BERMAN: May I see it?

MR. STERN: Yes, here, Mr. Berman. I offer this as trustee's exhibit #16.

THE REFEREE: Do you have any objections?

MR. BERMAN: No objection, your Honor.

THE REFEREE: That's in evidence.

MR. STERN: Mark it trustee's exhibit #16 in evidence.

(So marked by the Court Reporter.)

Q When did John Licht, Inc. first start having financial problems?

A In November , the end of November of 1966.

Q Prior to that time, had John Licht, Inc. ever had a set of circumstances where it didn't have enough cash to meet its obligations?

A Yes.

Q And when were those periods?

A Whenever those periods arose, we went to the bank and borrowed money.

Q Did there come any time, when you needed money or had to pay off the bank loans and didn't have any cash to meet those obligations?

A Not until November of 1966.

Q Prior to November of 1966, hadn't you engaged in the practice of exchanging accomodation notes with other parties?

A Yes.

Q For the purpose of raising money to meet your immediate obligations?

A Yes.

Q And over what period of time, did that extend?

A A few years.

Q Prior to November 11, of 1966?

A Yes.

Q Did that go back to 1965?

A A few years back, I don't know.

Q Would it go all through the year 1966?

A Not all through the year, up until August of 1966.

Q During that time, you would find that you'd have to raise money outside of the ordinary course of business?

A When I needed it, that's what I did.

Q Prior to November 11, 1966, Did you ever order large quantities of merchandise from the Westing House Corporation, with the express intent and purpose of selling it at less than your invoice

price, for the purpose of raising cash to pay off notes and bank loans, and other obligations of John Licht, Inc.?

MR. BERMAN: Your Honor, I object to it on the ground that it is not material to the specification filed here. It doesn't concern a --. We're talking about transfer of property.

THE REFEREE: Except that it must be a trans-fer of property at a time when the bankrupt was insolvent.

MR. BERMAN: No, no, in contemplation of bankruptcy, not insolvent, in contemplation of bankruptcy.

THE REFEREE: That is right, and I think that is what Mr. Stern is attempting to prove. I will overrule your objection.

Q Could you answer that question?

A I'd like to have it read back.

(The last question is read back by the Court Reporter) Quote:

" Q Prior to November 11, 1966, did you ever order large quantities of merchandise from the Westing House Corporation, with the express intent and purpose of selling it at less than your invoice price, for the purpose of raising cash to pay off

notes, bank loans, and other obligations of John Licht, Inc.?

A Yes, I purchased the material to pay off the bank, but I didn't sell it at less than cost. I sold it at cost.

Q Whether or not you sold it at cost or less than cost, where did you anticipate that you would be able to get the money to pay off those purchase invoices when they became due?

A From the renewal of my bank loan?

Q If that bank loan were not renewed, would you be able to meet those purchase invoices when they became due?

Q Because the bank loan wasn't renewed, that's why I am in the position that I am in.

Q Well, the question is if the bank loan were not renewed, did you anticipate that you would have the funds to pay off those purchase invoices when they became due?

MR. BERMAN: I object to the form of the question, your Honor, and the fact that it is not material and relevant.

THE REFEREE: I will allow it.

MR. BERMAN: Will you repeat the question for him again, please?

(The last question is read back by Court Reporter.

" Q If the bank loan were not renewed, did you anticipate that you would have the funds to pay off those purchase invoices when they became due? "

A No, I don't know how I could have paid it off if the bank didn't renew the loan. The bank loan was for $425,000.00, of which I paid it off in full for thirty days.

Q What do you mean " paid it off in full for thirty days?"

A Exactly that, to pay the full loan off, to the sum of $425,000.00.. That was the loan.

Q That was the loan?

A Right.

A And you paid it off?

A I paid it off, from October 1, to November 30, --, November 1, to November 31, I believe that is the period , I am not too --.

MR. BERMAN: You mean November 30th.

THE WITNESS: November 30th, throughout the month of November, of which the bank then assured me when I did pay them off, that I would not only get back the money that they had previously loaned me, but my line of credit would be bigger.

Q Now, did you have any discussion with anyone

at the bank with regard to this?

A Yes, I did.

Q Who was that?

A Douglas Savage.

Q And prior to the time that you --. Where did you get this $430,000.00 to pay off the loan?

A I got that from extended billing from A. C. Spark Plug Company, Westing House, and General Electric.

Q In other words, you ordered merchandise in from those companies?

A Of which they gave me extended billing for this purpose.

Q Sixty or ninety days?

A They gave me more than that, they gave me a hundred and twenty days.

Q When you say that they gave you extended billing for that purpose, do you mean that they understood that you were buying their merchandise to sell to raise cash to pay off a bank loan?

A Well, they gave me the extended billing which is beyond their usual terms.

THE REFEREE: I don't think that that answers Mr. Stern's question. Will you repeat it, please?

THE WITNESS: He doesn't have to, your Honor, I understand the question, whether they knew what I was going to do with the money.

THE REFEREE: That's right.

THE WITNESS: I think I discussed it with them, I'm not sure, because I know I got the special terms, and you don't get special terms without giving them a reason for it.

Q With which companies did you discuss it?

A With all three.

Q With whom of those companies?

A I don't remember whether it was with the sales representatives that came in or the General Sales Manager, or the credit department.

Q What was the substance of the discussions?

A What was the substance?

A Yes.

Q That I needed money and needed extended billing.

Q Well, did you tell them what your specific intent and purpose was in getting that extended billing?

A I umust have told them something to get the extended billing. They don't give it to you for no reason at all.

Q Well, whether or not, --.

A I can't pin-point it, because I don't recall exactly.

Q What we have here is a situation where you have bank loans becoming due, is that correct?

A The bank loans were on, and they were for a clean-up period.

Q In other words, somebody at the bank said that you would have to clean up these loans, and you didn't have the money to do it, is that right?

A That's right.

Q Did you discuss with Mr. Savage, did he suggest to you that you buy merchandise and sell it off quickly for cash to pay the loans off?

A Yes, to get that extended billing.

Q And did you tell these people, A. C., Westing House, and I believe that it was General Electric, that you were ordering their merchandise for the specific purpose of selling it, reducing it to cash, and paying off bank obligations, which you otherwise could not meet?

A I probably told them that to get the extended billing.

Q Well, did you specifically tell them that?

A No matter how many times you ask me, I am

going to tell you the same thing.

THE REFEREE: Is your answer that you don't remember?

THE WITNESS: That's right, your Honor. I must have told them that to get the extended billing because you don't you don't get the extended billing unless you have a specific reason to ask them for it. Now, I assume that is the reason why they gave it to me, because there is no other reason why they would give it to me.

Q In other words, they gave you this extended loan because you said,,- look fellows, I can't meet my obligations, so if you --.

THE REFEREE: To the bank.

Q Meet my obligations to the bank, so if you give me more credit than usual, and I can turn over your merchandise that this would have the effect of bailing me out with the bank.

MR. BERMAN: Your Honor, I object to the form of the question, that he is stating facts that are not in evidence. It is an assumption.

THE REFEREE: He is posing a hypothetical question to Mr. Licht --.

MR. BERMAN: Well, it seems to me that he was summing up.

THE REFEREE: No, because Mr. Licht doesn't remember or has testified that he doesn't remember what he said. I am going to allow it. Would that be in substance what you said to him?

THE WITNESS: Yes, your Honor. It is not unusual for manufacturers to work along with their good accounts. They help them do this when bank clear ups came.

Q I see. And it is your testimony now that you never sold any of this merchandise for less than invoice price?

A Less than invoice price? I sold it less than invoice price, but I got rebates that brought it back up again.

Q But, you would have to pay the invoice price?

A Well, by the time I paid the invoice price, I would get a credit to offset the difference.

Q Did you ever have a discussion with Mr. Savage wherein he suggested to you that even if you took that small loss on this merchandise, it would be less than the interest you would have to pay if you borrowed the money on the ordinary terms?

A Yes.

Q You did discuss that with him?

A85

A Yes.

Q And did you anticipate doing that?

A Yes, if I had to.

Q If you had to?

A Yes.

Q Now, did you have any reasonable grounds to anticipate at the time you went through these transactions that the bank would renew your loan?

A Would you repeat that again?

Q Would you have any reasonable grounds to anticipate at the time you went through this transaction of buying merchandise and reducing it to cash, and clearing off the loans, that the bank would renew your loan?

A That they would renew it?

Q Yes.

A I felt very confident that they would. there was no question about it. I was assured of it.

Q Well, they knew you were in trouble, didn't they?

A No, you're not in trouble, when you can't clear up a $400,000.00 for one month. How many businesses can do that?

Q But, they wouldn't extend it, they wanted you to clear it off.

A I didn't say they wouldn't extend it. He said if I could clear it off, it would be better for me, because my line of credit would be increased.

Q And didn't it occur to you that it would also be better for the loan office if he got off the hook too?

A But, he wasn't off the hook because he was going right back on, and I didn't have to get off the hook, because I could have extended it for another year. Except that I wanted to get into a stronger position with the bank, because we weren't banking at this bank too long, and I thought it was worth the effort to do it, to firm up my position.

THE REFEREE: Which bank are you talking about?

THE WITNESS: Franklin National.

Q You had been in business for some years prior to this time, hadn't you?

A Yes.

Q And you had dealt with banks?

A Yes.

Q Banks are usually pretty catious institutions, aren't they?

MR. BERMAN: Your Honor, I object to the question as not being material, as to whether banks

are cautious institutions.

MR. STERN: These questions go to the matter of what was his actual state of mind at the time these transactions were made.

THE REFEREE: I will allow it.

A No, I don't agree that they are that cautious.

Q Well, here you were in a situation where you couldn't meet the loans when they became due for whatever reasons, is that right?

A Right.

Q And rather than getting an extension of credit, you were going to clear these loans off, is that right?

A That's right.

Q And the man that you were discussing this knew that you would have to purchase new merchandise and incur new obligations to raise the cash to meet these loans, is that right?

A That's right.

Q And that subsequently after you paid these loans, if he gave you more money and renewed the loan that you would be right back in the same hole, wouldn't you?

A What hole was that?

Q You would owe the bank, and you would also owe the people you had bought the merchandise from.

A The bank loans, we've always owed, through our expansion of business.

Q That's right.

A We've always had a bank loan for a large amount on the books for fifty years.

Q Had you ever bought merchandise and sold it off for either invoice or less than invoice price to raise the cash to pay off the loan?

A That was the only way we could ever clear off the loan.

Q This was your regular course of doing business for over fifty years?

A That's right, when the loan had to be cleared off, we cleared it off. We raised money whatever way we can, whether it was with delayed billing or what have you.

Q When did you find out that the bank wasn't going to renew your loan?

A On the day it came up for renewal.

Q When was that?

A On November 30th.

THE REFEREE: 1966?

THE WITNESS: 1966.

Q On November 30, 1966?

A Yes.

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"Q Subsequent to November 30, 1966, did you receive any of this merchandise that you have admitted receiving for your own use? "

A Would that be after November of 1967?

Q Yes.

A Yes.

Q And you still kept it?

A Yes.

Q Now, at the time that you kept this merchandise, you knew that the bank wasn't going to renew your loan, did you have any idea of how you were going to pay for the merchandise you had purchased to reduce the bank loan?

A The bank renewed $200,000.00 of the loan.

Q The bank renewed $200,000.00 of the loan?

A Yes, that's half the amount.

Q So you were still short some $230,000.00, is that correct?

A Right.

Q And did you anticipate how you were going to pay that off when it became due?

A Yes, I did.

Q How?

A I went to factoring.

Q Did you receive enough money from the factor to pay off the Westing House purchases when they became due?

A By the time I got the money from the factors, there was so much of it due already that I paid off as much as I could, and I was still short.

Q You say that by the time you got the money from the factors there was so much that was due, you knew how much was going to be due over a particular period of time, is that right?

A Because there was more business being done, and more obligations coming up. I didn't get my money from the factors until March 1.

Q Well, you had originally assigned to the factor all of your then outstanding invoices, hadn't you?

A No, it was in March.

Q In March?

A March.

Q And when were these obligations becoming due?

A What obligations were that? Factor obligations?

Q No, the obligation for this merchandise you had purchased, for the other obligations you said had become due.

A They had all past due by March 1st.

Q So by March 1st, they were all past due?

A Right.

Q And at that time you didnt' have enough money to meet your obligations?

A I paid everybody some on account.

Q But you didn't pay off everybody?

A No, I paid everybody on account, that does not mean pay off. On account.

Q So there were still obligations that were past due even though you had paid some on account?

A That's right.

Q And did you know what amount of merchandise you were going to assign to the factor?

A I assigned the invoices in bulk.

Q What was the bulk amount that you assigned?

A I don't recall.

Q Was it enough to pay off all of your obligations what the factor paid for all of those invoices?

A I told you it wasn't.

Q So, even if you got paid by the factor, and

the factor accepted all of your assignments, you would still not have enough to pay off all of your obligations?

A No.

Q So this was a snowballing thing, that was accumulating and gathering momentum from --?

A At the time I signed with the factor, I thought it would be enough.

Q When you say that you thought it would be enough --, you had a set of books, hadn't you, Mr. Licht?

A I thought it would be enough. I thought enough of it that I signed away my home and my father's home. I felt confident that it would be enough.

Q When you say that you signed them away, you put them as collateral?

A I signed them away. I don't have my home anymore, neither does my mother and father.

Q I am aware of that.

A And I wouldn't have signed it away if I thought that I didn't have a chance to come out of it.

Q You wouldn't have signed it away --?

A No, I wouldn't have.

Q If you were desperate and thought that you would grasp at any straw to try and keep going?

A I was trying to keep the business going.

Q But, you do understand that there is a difference between confidence and desperation, don't you?

MR. BERMAN: I'll object to the question, your Honor.

THE REFEREE: I'll sustain the objection.

Q Now, were there included among the invoices which you assigned to the factor any invoices which you knew were false or fictitious?

A The accounts receivable assigned in bulk.

MR. BERMAN: I'll object to that, your Honor as being immaterial. There is no materiality, there is no question about false or fictitious accounts receivable in this proceeding.

THE REFEREE: I think in the second, isn't there?

MR. BERMAN: I don't know, your Honor, we're still on the first, as a matter of fact.

MR. STERN: The question goes ---. the thrust of the question is in this direction, your Honor. If among the invoices assigned to the factor were invoices which he knew were either fictitious

or otherwise uncollectable, he would realize that the factor would soon, in due course, discover that and he would be charged back for those. And that in fact --.

THE REFEREE: That in fact at that point he was insolvent.

MR. STERN: And that he would not get as much from the factor as he had anticipated or even contemplated getting.

THE REFEREE: I'll allow it in that case.

MR. STERN: Would you read the question?

(Reporter reads back last question.)

"Q Were there included among the invoices that you assigned to the factor any invoices which you knew were false or fictitious? "

A There were pre invoices of A. C. material in with the invoices.

Q What's a"pre invoice"?

A That was anticipated shipments to be made when the merchandise came in.

Q But, in fact the merchandise had not come in and had not been shipped?

A That's right.

Q So those were not valid invoices?

A That's right.

order? Are you going to proceed with your proof, because we have a number of them?

THE REFEREE: I prefer that you do it that way. I prefer that you proceed with them in the order that they are listed in the specifications.

MR. STERN: That's what I plan to do.

MR. BERMAN: We're on specification one now, I take it.

MR. STERN: That's correct.

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Page 107 to page 111

Q Do you remember testifying on August 2, 1967 before Referee Price?

A Yes.

Q Now, quoting from page 89 of that transcript, line 6: Quote:

"Q How about Westing House do you have to sell that for less than it costs you?

A Yes.

Q You mean Westing House merchandise does not have the same public appeal as A. C. -"

THE REFEREE: Excuse me, just a minute. Off the record.

(Discussion off the record.)

MR. STERN: I'll continue reading from the transcript. Quote:

"Q You mean Westing House merchandise does not have the same public appeal as A. C.?

A The competition is different.

Q What would be the purpose of your buying large quantities of Westing House merchandise and selling it for less than you paid for it?

A To raise cash to pay off the bank to get off the books for the end of the year." (End of quote.)

Q Now, with regard specifically to the Westing House merchandise, as distinct from the A. C., or

the General Electric merchandise, did you contemplate selling that Westing House merchandise for less than you paid for it, and taking a loss for the purpose of raising cash to pay off the bank?

A Well, I contemplated selling it for any price that would make it attractive to people who buy in large quantities. Now, I had an inside deal with Westing House, and I did sell it below cost, but the inside kick back that I had brought it pretty close to cost.

Q Pretty close, but there --.

A There was a difference, yes.

Q Was part of the money that you raised to pay off the $400,000.00 bank loan raised as a result of taking accomodation notes from other parties and discounting them?

A Some of it was, yes.

Q Some of it was?

A Yes.

Q So, insofar as those notes were concerned, you knew that John Licht, Inc. would subsequently have to raise the money to pay off those notes when

A Yes, I did.

Q And that wasn't a question of accounts receivable coming in, or a question of buying merchan-

dise and selling it for a profit?

A Those notes had to be met.

Q Those notes had to be met, and they had to be met out of whatever resources you had at hand, is that right?

A Yes.

MR. STERN: I think that's all I have for now, your Honor.

MR. BERMAN: Your Honor, may I ask a few questions on cross-examination, I don't want to go on extensively.

THE REFEREE: Sure, go ahead.

MR. STERN: Without waiving any rights to continue at some other time.

CROSS-EXAMINATION

BY MR. BERMAN:

Q Mr. Licht, you've testified in connection with the fact that the Franklin National Bank refused you to renew your loan for $430,000.00, is that correct?

A Yes.

Q And you discussed the situation with Mr. Savage?

A That's right.

Q Now, I think you said that the thirty day

A100

waiting period had termin ted on November 30th 1967, is that correct?

A Yes.

Q And had you expected to receive a new loan of $430,000.00 on that day?

A A minimum of $430,000.00.

Q You expected to get more?

A If I needed more, I didn't know if I needed more at the time.

Q Now, when were you advised by Mr. Savage that you would not get at least $430,000.00?

A On November 30th.

Q What did he say to you?

A On November 30th it broke in the newspapers that one of my customers got involved with a carload of stolen shavers.

Q Now, who was that customer?

A Admiral Motors.

Q And how much did Admiral Motors owe Melvin Licht --, I'm sorry, how much did Amiral Motors owe John Licht, Inc. , at that time?

A He owed us about a hundred and fifteen to a hundred and twenty thousand dollars.

Q And was Mr. Savage aware of that fact?

A Yes, because a good quarter part of it was

A101

notes that I had discounted.

Q With the Franklin Bank is that correct?

A Yes.

Q What did Mr. Savage say to you in connection with this transaction?

A He said, - Well, now, that Admiral's in this type of a situation, how does that leave you financially? And I said, -well, I expect to get paid, I mean he didn't close his business up. He is still doing business regardless of what he did, and he's always made the notes good. Well, Mr. Savage then said to me, - well, you know you have people down town, and you get the old bank run around. And he only gave me in fact $200,000.00.

Q And you attributed that to the fact that the Admiral matter broke?

A There is no question about it, that was the only thing that he pointed it to, and that was the only reason which he was very apologetic about doing but he said his hands were tied because of the situation.

Q And how much of a loan did they give John Licht, Inc.?

A $200,000.00.

MR. BERMAN: All right, that's all that I

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Page 5 - line 10 to page 25 - line 6

Q Now, I show you a xerox copy of a document which had been marked as Trustee's Exhibit 3 for identification, of October 18, 1967, and ask you if you can identify this.

A That is a purchase order to Maritz for various items shipped to my home.

Q And were those items shipped to your home?

A Yes.

Q And what is the date of that purchase order?

A 11/16 -- it looks like 1960.

MR. STERN: May I see that?

THE WITNESS (handing): Here.

Q Could that be 1966?

A I don't know.

Q Well, that's what it looks like, Mr. Licht. It's my recollection that the AC point program didn't commence

until sometime in 1962. Is that correct?

A No, I think it was much before that.

Q When did John Licht, Inc. begin its participation with that program?

A We were an AC distributor for some thirty-five years, and a good twenty of them I recollect them always having some sort of incentive program on price points.

Q With the Maritz Company?

A That's the only company I recall ever doing business with.

Q Well, after examining that further, do you think it's possible the date is 1960 or 1966?

A I don't know.

Q You are unable to determine?

A There is nothing here that would be outstanding that I would remember.

THE REFEREE: Off the record.

(Discussion off the record.)

Q This document has a stamp which says "Key punched" some date in 1966; is that correct?

A Yes.

Q And the "1966" on that stamp is clear, is it not?

A Reasonably so.

Q You're satisified that says "1966" on that in the circle where it says "Key Punched"; isn't that right?

A Yes.

Q Would that help you to determine whether it was 1960 or 1966 that you made that order?

A If it was key-punched in 1966 the order must have been made in '66.

Q All right.

MR. STERN: Your Honor, I offer this as a trustee's exhibit.

THE REFEREE: Show it to Mr. Berman.

MR. BERMAN: No objection.

MR. STERN: I offer this as Trustee's Exhibit --

THE REFEREE:Was this Exhibit 3 for identification of the 9th?

MR. STERN: No.

THE REFEREE: That is a new one?

MR. STERN: This was originally identified as Trustee's Exhibit 3 for Identification of October 16, 1967.

THE REFEREE: I thought it had been offered on Friday.

MR. STERN: No.

THE REFEREE: Then it will be marked as Trustee's Exhibit 1 of today, rather than try to --

MR. STERN: Please mark this as Trustee's Exhibit No. 17.

THE REFEREE: Do you have a number on that?

MR. STERN: Yes, the serial number on this is 1659.

(Purchase Order 1659 marked Trustee's Exhibit 17 for identification, of this date.)

MR. STERN: This document has listed on it a beige mink trimmed coat, jacket, dress, coat, slacks, an organ, a microscope set.

Q Did you receive the items on this purchase order?

A Yes. This is the one you just asked me about, isn't it?

Q Yes. And if this order had been placed on November 16, 1966, would you have possibly received it after November 30, 1966?

A You mean received the merchandise?

Q Yes, received it at home.

A Possibly. There is nothing here that is special, so it comes through pretty fast.

Q I have here a document that is apparently a

communication from Maritz with shipping instructions to Mr. Mel Licht, 44 Bayberry Road, previously marked as Trustee's Exhibit 4 for identification, of October 18, 1967, and I ask you if you recognize what that is.

A Yes, that's the same dress that is on that order.

Q Dress or address?

A It's the same dress.

Q In other words, that's the confirmation of the order having been placed for the dress which is on this order; is that correct?

A Yes.

Q And what is the date on that? Is that dated December 1, 1966?

A I don't see any date.

THE REFEREE: Isn't it dated on the upper left December 1st?

THE WITNESS: Oh, yes, December 1st, 1966.

MR. STERN: I offer this as Trustee's Exhibit 18.

MR. BERMAN: Did you receive this, Mr. Licht?

THE WITNESS: Did I receive that letter?

MR. BERMAN: Yes.

THE WITNESS: No, that letter wasn't

sent to me.

Q You never received this letter?

A No.

MR. BERMAN: Then I object to it, your Honor, if he didn't receive the letter.

MR. STERN: I withdraw it.

THE REFEREE: To whom is it addressed?

MR. STERN: It is apparently, your Honor, addressed to the person who supply this, and it had shipping instructions to Mr. Mel Licht. If the witness doesn't remember receiving this and not having the familiarity with the case that others have, I will just withdraw it.

MR. BERMAN: That was offered but not marked.

THE REFEREE: And then you withdrew it.

MR. STERN: Right. The number was not used.

Q I have here a copy of a purchase order No. 1669, on John Licht's stationery, which has previously been marked Trustee's Exhibit 5 for identification of October 18, 1967. Mr. Licht, do you recognize that document?

A Yes.

MR. STERN: I offer this as Trustee's Exhibit 18.

MR. BERMAN: I think this is 1069.

MR. STERN: The date on this is December 6, 1966. The one immediately following also has the same date, 1670, so I assume that's 1669.

MR. BERMAN: This was marked 1069 in your 21A examination.

MR. STERN: That appears to be the case, but that number is not material.

THE REFEREE: Whatever the number is, you're offering this paper.

MR. BERMAN: May I question the witness, your Honor?

THE REFEREE: Yes, surely.

BY MR. BERMAN:

Q Did you receive these items?

A Yes, I did.

MR. BERMAN: No objection.

MR. STERN: I offer it.

THE REFEREE: Trustee's Exhibit 18.

MR. STERN: Right.

(Document marked Trustee's Exhibit 18 for identification, of this date.)

BY MR. STERN:

Q What is the date on this document?

A 12/6/66.

Q That's your signature on the bottom thereof?

A Yes.

Q Did you execute that order subsequent to learning from Franklin National Bank that they would only renew your credit line for approximately half of what you had previously?

MR. BERMAN: Your Honor, I object to the question as already answered. Obviously, his testimony was that he was notified on November 30th. Actually all of this is December 6th.

THE REFEREE: Will you repeat the question.

(Question read by the reporter.)

A Yes.

Q Now, I have another purchase order No. 1670, previously marked Trustee's Exhibit 6 for identification of October 18, 1967, and I ask you if you can identify that.

A Yes.

THE REFEREE: It's a purchase order to Maritz for a watch to be shipped to John Licht, Inc.

MR. STERN: I offer this as Trustee's Exhibit 19.

MR. BERMAN: Did you receive this watch, Mr. Licht?

THE WITNESS: No, I didn't.

MR. BERMAN: I object to it, then.

MR. STERN: Well, I don't see that the objection follows. Whether or not he received it doesn't change its evidentiary value. I may seek to use that on another point.

MR. BERMAN: We are on a question now whether he transferred to himself or concealed property belonging to the bankrupt.

THE REFEREE: He denied it, but I will overrule your objection and permit Mr. Stern to question him concerning the disposition of that piece of property if he wishes.

Mark it.

(Purchase order marked Trustee's Exhibit 19 for identification, of this date.)

MR. BERMAN: What is the date of that?

MR. STERN: December 6, 1966.

Q Did John Licht, Inc. subsequently receive the watch that is indicated?

A Yes.

Q What disposition was made of that watch?

A It was probably given to a customer as a premium.

Q Do you remember which customer?

A No, I don't.

Q But your recollection now is that it went to a customer?

A Yes.

Q On October 18, 1967, do you remember being asked these questions and giving these answers on page 27:

"Question: Now, I show you Order No. 1670 dated December 6, 1966, to Maritz, and ask you if you signed it.

"Answer: Yes.

"Question: What was purchased pursuant to that order?

"Answer: A watch.

"Question; What kind of watch?

"Answer: A Longines.

"Question: Delivered where?

"Answer: To John Licht.

"Question: Who received it at John Licht?

"Answer: I don't know.

"Question: What happened to that watch?

"Answer: I don't know.

"Question: This was only about six or seven months ago, Mr. Licht. You can't remember?

"Answer: It is eleven months ago and I do not remember."

Q Do you remember being asked those questions and giving those answers?

A No, I don't remember.

Q Does this refresh your recollection as to whether you were asked those questions and gave those answers?

A Most likely I was asked those questions, but I don't remember.

Q At a period only eleven months after the transaction took place you testified you didn't remember what the disposition of the watch was.

Now in June of 1972, apparently your recollection is clear that it went to a customer, some four years later?

MR. BERMAN: He didn't say that exactly. He said it probably went to a customer.

THE REFEREE: I would say his original testimony was that it probably went to a customer.

Q Your testimony that it probably went to a

customer is certainly more definitive than an answer that you don't remember what happened to it, isn't it?

A This watch is worth $45. If it was ordered for myself, it would have been sent to my home like all the other orders were. Anything going into the place was usually for customers.

Well, it's a probable assumption on my part that anything shipped to John Licht at 8696 18th Avenue was something that was to be used for customers.

Q In other words, this is a probable assumption you can make now, in 1972, but you were incapable of making that assumption in October of 1967?

A I don't recall all the instances in 1967 of why I didn't say that or why I did say that. I'm telling you it probably went to a customer.

MR. BERMAN: Your Honor, I move to strike that Exhibit 19 out on the ground it has no bearing on these issues.

THE REFEREE: No, I will allow it to stand.

Q Mr. Licht, did you receive from Maritz through the AC Incentive Point program a General Electric built-in oven? Did you personally ever receive such an item?

A Yes.

Q Was that oven installed in your home?

A Yes.

Q Do you remember when that oven arrived?

A No.

Q Was it after March of 1967?

A No.

THE REFEREE: Is that "No," or you don't know?

THE WITNESS: No, it was not.

Q I show you this document which has a description on it of a General Electric oven. Is that a description of the oven you received and had installed in your home?

A Yes.

MR. STERN: I am going to read some more testimony from your examination of October 18, 1967.

MR. BERMAN: What page?

MR. STERN: Page 38.

"Question: I show you the Maritz Company Order No. 907347, dated March 20, 1967, directed to General Electric Company for a General Electric built-in oven to be delivered to Mr. Mel Licht in Lawrence, New York. Did you personally receive that oven in your home?

"Answer: Yes, I did.

"Question: And that is built in in your kitchen someplace?

"Answer: Yes.

"Question: And it is still there?

"Answer: Yes.

"Question: Does that refresh your recollection as to when you received that General Electric oven?

"Answer: I already answered that I don't recall. If that's the date, that's when I received it.

"Question: This is Order No. 907347.

"Answer: This is a purchase order from Maritz to General Electric on March 20th. When I ordered it, I don't know.

Q Would the oven have come to you prior to the date that Maritz ordered from General Electric?

A No, it would be after the date.

Q So it must have come after March 20, 1967; is that correct?

A Yes.

Q So it is your testimony now that you received that oven after March 20, 1967?

A I must have.

MR. STERN: I offer this in evidence as Trustee's Exhibit 20.

MR. BERMAN: No objection.

(Order No. 907347 marked Trustee's Exhibit 20 for identification, of this date.)

Q Do you recollect when it was that John Licht, Inc. first called a meeting of its creditors to discuss whatever financial problems John Licht may have had at that time?

A That was in May.

Q Of 1967?

A Yes.

Q Could it have been in April?

A I don't think so. It might have been, but I don't think so.

Q Was it the early part of May?

A The early part of May.

MR. STERN: With Mr. Berman's permission, in the interest of expediting the proceeding I would like to show him three documents at one time.

THE REFEREE: Certainly.

Q I would like to show you these three documents, which are John Licht Purchase Order No. 1261 dated

3/22/67; 1291 dated 4/20/67; and 1304 dated 4/28/67, and ask you if you can identify these documents.

Are those purchase orders executed by you and sent to the Maritz Company as part of the AC Incentive Program?

A Yes.

MR. STERN: I offer these as Trustee's Exhibits 21, 22 and 23.

THE REFEREE: Show them to Mr. Berman.

MR. BERMAN: Did you receive these items?

THE WITNESS: Yes, sir.

MR. BERMAN: All right.

(Documents marked Trustee's Exhibits 21, 22, and 23 respectively, for identification, of this date.)

Q You have testified that your first meeting of creditors was approximately the beginning of May, the early part of May. Assuming that the early part of May is within the first two weeks of May, the last of these was executed within some six weeks prior to your first meeting of creditors; is that correct?

MR. BERMAN: Your Honor, I object to that. That is just a matter of computation, which we all can make. He asked the question whether the meeting

was in May. He knows the date of the invoice.

I object to the question as not being material at all or relevant.

Q Was the last of those purchase orders executed within some six weeks of your first meeting of creditors?

A Yes, sir.

Q When was the original petition for a Chapter 11 filed in this case, do you recollect?

MR. BERMAN: Which case are you talking about?

MR. STERN: John Licht.

MR. BERMAN: I think June 1st.

THE REFEREE: I have the individual petition. They were filed later.

Off the record.

(Discussion off the record.)

Q Prior to the filing of the petition in the Chapter 11 arrangement of John Licht, Inc., had all of the AC incentive coupons to which John Licht, Inc. was entitled been used to purchase various commodities?

A Due to the fact we haven't been receiving new ones, I imagine they were used up.

Q Is your answer "yes" or "no"?

A "Yes."

Q So there were none left as assets of the estate subsequent to the filing of the petition?

A No, there weren't.

Q You have testified that -- My recollection is that last week you testified that your sister, Gloria Tokowsky, had never received any of the merchandise obtained through this AC Incentive Program as compensation for work she had performed for John Licht, Inc.

A Yes.

Q Do you have any recollection of ever having testified otherwise?

A Yes.

Q You did testify otherwise?

A Yes.

MR. BERMAN: I think we went all through that in the last hearing. It is being repeated. That is my recollection.

THE REFEREE: I don't recall whether or not there was any testimony adduced as to the discrepancy in testimony. I know Mr. Licht testified last time that Mrs. Tokowsky did not receive any of the merchandise as compensation and that she paid for whatever she got. He testified that he had discussed the matter with

her subsequent to his testimony.

MR. BERMAN: Subsequent to her testimony.

When confronted with his former testimony he said he had discussed it subsequent to her testimony and she told him she paid for everything and he believed her.

THE REFEREE: Right.

MR. BERMAN: His testimony now is that she paid for everything because that's what she told him.

THE REFEREE: And he believed it.

MR. STERN: What I plan to do is show prior inconsistencies in his testimony, which goes to his credibility.

THE REFEREE: That's right.

He is obviously a hostile witness. If you'd like me to make such a finding, I'll be delighted to do it. He is the bankrupt and the trustee is attempting to prove specifications of objections out of his mouth to bar his discharge.

Q On September 22nd --

THE REFEREE: Just a minute, Mr. Stern. I now have the petitions that were filed and the John Licht, Inc. petition was filed on June 1st --

MR. STERN: 1967.

THE REFEREE: No, I received it on June 5th, 1967. Yes, it was filed in the Clerk's office on June 1st at 3:15 p.m.

MR. STERN: It may have been a Friday.

THE REFEREE: It appears as though this may have been the 13th. There is a "1" and a "3" and I see that the stamp is June 1, 3:15 p.m.

MR. STERN: This is a record in the case; we don't have to mark this?

THE REFEREE: No. And let the record indicate that the individual petitions on behalf of John and Melvin Licht were filed on June 8th, 1967. Here they are. Would you like to look at them?

Q The petition in John Licht, Inc. was filed within two or three weeks of the first of the meetings you held with creditors; is that correct?

A What do you mean, within two or three weeks after?

Q Well, within two or three weeks after the first of the meetings you had with the creditors; is that correct?

A However long it was.

Q At the time you initiated these meetings with

your creditors did you anticipate that if you couldn't come to some out-of-court settlement or arrangement with them that you would have to initiate some sort of bankruptcy proceeding?

A Yes.

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cross-examination.

MR. BERMAN: I didn't cross-examine him.

DIRECT EXAMINATION

BY MR. BERMAN:

Q Mr. Licht, when did you start working for John Licht, Inc.?

A 1949.

Q Did you continue working for that company until June of 1967 when you went into bankruptcy proceedings?

A Yes.

Q Did there come a time during that period of time when you undertook to run and manage this company?

A Yes.

Q When was that?

A 1950.

Q How long had John Licht, or John Licht, Inc. been in business?

A Around fifty years.

Q Your father ran the business prior to 1950?

A Yes.

Q When you took over did your father continue on in the business?

A He went to Florida for a while and then I went into the Service for two years and he came back to run the

business. When I came out of the Service I continued to run the business.

Q That was in what year?

A That was in 1952 I resumed again.

Q How long had the AC Incentive Program been in existence?

A As long as I can remember they had an incentive program with price points.

Q During the years 1966 and 1967 and let's say five years prior to 1967, can you tell the Court how much in points or money did John Licht, Inc. receive under the incentive program per year?

A We received between, at cost, about $50,000 to $60,000 worth of points per year.

Q You say that is so for five years prior to 1967?

A Yes.

Q How much compensation were you receiving from John Licht, Inc. in 1966 and '67?

A That's by salary?

Q I mean salary, money salary.

A $150 per week.

Q You have testified,and I'm asking you again why did you take these points that belonged to John Licht,

Inc. and the property which they represent?

A It was additional compensation.

Q What duties did you --

THE REFEREE: Off the record.

(Discussion off the record.)

Q What were your duties with John Licht, Inc.?

A I was sales manager, I was purchasing manager and I also called on customers and sold goods.

Q Can you give us some idea of how much of the AC products you actually sold?

A I personally sold a minimum of 80% of the purchases of AC products.

Q. Now, you have testified that you took these points and the property as additional compensation; is that correct?

A Yes.

Q You didn't report this compensation on your income tax returns, did you?

A No

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Q Mr. Licht, in November of 1967 you testified that Franklin National Bank requested that you pay the loan which was outstanding from John Licht, Inc. in full; is that correct?

A Yes, they look for their yearly cleanup.

Q Had you done business with Franklin National Bank on a loan basis prior to 1967? When I say you, I'm talking about John Licht, Inc.

A Excuse me?

Q Was this the first time the company had borrowed money from Franklin National Bank?

A Yes.

Q What bank was the company borrowing from over the past fifty years?

A Bankers Trust.

Q Was it the practice at Bankers Trust to pay off your loans every year for a period of thirty days?

A We didn't pay up every year, but cleared up with them from time to time.

Q Do they require you to do so as a matter of practice?

A Yes.

Q How many times was it done with Bankers Trust?

A I don't recall.

Q Was it done several times?

A Yes.

Q How large would the loans be with Bankers Trust Company?

A As much as $300,000, $250,000 to $300,000.

Q Any reason why you changed from Bankers Trust Company to Franklin National Bank?

A Well, they gave us a larger line of credit.

Q When was that?

A Latter part of '65 or early '66.

Q It became due in the latter part of '67?

A No, November of 1966.

Q I'm sorry, November of 1966 is when the first loan came due?

A I don't know when it became due, because the cash flow was heavy in those months.

Q Were you requested by Franklin National Bank to clean this up?

A Yes.

Q Since it had been done by Bankers Trust Company, did you feel this was a natural thing for the bank to do?

A Yes.

Q You testified to the methods you used in an attempt to clean up this loan, didn't you?

A Yes.

Q You felt you would get a renewal of this loan in the amount of $400,000 or larger?

A I was promised a larger amount.

Q By whom at Franklin National Bank?

A By Douglas Savage.

Q Will you tell us again the reason Mr. Savage gave you for not renewing your loan in the amount of $400,000 or larger?

A The day the loan was to be renewed --

Q Which was what date?

A November 30th, one of my large customers, Admiral Automotive, owed me a considerable amount of money at the time, and who banked at the Franklin National, the same bank I did, got involved in a carload of stolen merchandise, and the bank at that time felt we would be in jeopardy because of it.

Q Was it publicized in the newspaper?

A Yes, broke in the newspaper on the 30th.

Q Is that the reason Mr. Savage gave you for not renewing your loan for the $400,000 amount?

A Yes.

Q Up to that time did you feel you would get the $450,000 or larger amount?

A There was no question about it.

Q Subsequent to November 30, 1967, did you make an arrangement with Transamerica Financial Corporation for the factoring of your accounts receivable, of John Licht, Inc.?

A Yes, I did.

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Q Now, is it my understanding that your testimony is that at the time you took the merchandise you received through the AC Incentive Program, that you then considered it as additional compensation over and above your salary of $150 a week?

A Yes.

Q This is in 1966 and 1967?

A That is right.

Q Did the payroll records of John Licht, Inc. indicate that that merchandise was being given to you as compensation in lieu of cash as additional salary?

A No, it did not.

Q Did you know that the records of John Licht, Inc. did not so indicate?

A I didn't consider it actually cash, so I didn't think the records would indicate it.

Q But you knew that the records did not indicate that you had received this additional compensation? Is that correct?

A Yes.

Q And you were the general manager of the business?

A That is right.

Q Did the cash value represented by these goods and merchandise appear on the W2 form which you received from John Licht, Inc. for the years 1966 and 1967?

A No, they didn't.

Q Did you declare the cash value of that merchandise as income on the income tax returns that you and your wife filed jointly for the years 1966 and 1967?

A No, I didn't.

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Page 68 - line 21 to page 80 - line 22

Q Have you made an arrangement with IRS for the payment of additional taxes on these points or property that you got?

THE REFEREE: You mean pay additional taxes?

MR. BERMAN: Read the question.

might be exposing yourself to liability for paying income tax on that?

A I think we did discuss it; I think we did, yes.

Q Back in 1967?

A Yes.

Q What did you do with regard to that income afterwards?

A What was I supposed to do?

THE REFEREE: That isn't an answer.

Q Do you think you were supposed to do anything?

A I don't know. If I knew what to do in the first place, I wouldn't have been in the situation. If I knew I did something wrong, then I wouldn't have done it.

Q Let me ask you this: In 1967 did you go to the Internal Revenue Service and say, "Uncle Sam, I think I may have neglected to declare certain income in 1966 and 1967, and maybe we ought to talk it over and see if I owe you more"? Did you do that?

A In 1967 Mr. Margoles went to Internal Revenue and told them.

Q You didn't have to?

A I didn't have to because they were in touch with me thereafter.

Q And then what happened?

A And it's been under investigation ever since.

Q Now we have here a document which is your Exhibit A in evidence, which talks about computation or audit report. What is the date on that?

A What date are you referring to?

Q The date on the bottom.

A On the top here, over here?

Q There's a date down there, isn't there?

A March 6th.

Q March 6th what year?

A '72.

Q That's this year, right?

A Yes.

Q About three months ago, right?

A Yes.

Q And how did this audit come about?

A I was called by Internal Revenue and he said to me that he'd like to discuss the figures he has.

Q You were called?

A Yes.

Q When were you called?

A I was called prior to March.

Q When prior to March?

A A month before -- I don't recall exactly.

Q February? January? Was it in 1972?

A Yes.

Q It was in 1972.

A Yes.

Q Prior to being called by Internal Revenue Service in 1972 did you voluntarily offer to come in for an audit or suggest that perhaps you wanted to review your income tax for the year 1966 and 1967?

A No, I didn't.

Q Between 1967 and the beginning of this year did you ever undertake to file amended returns for the years 1966 and 1967, stating your true income for those years?

A No, because I got papers from Internal Revenue which I signed to hold the years open, and they were taking it from there.

Q That's right, but there was nothing to prevent you from voluntarily filing an amended return to correct the errors?

A There was no point in my doing it.

Q There was no point. In other words, you were content to sit back and let them see what they could find; isn't that right?

A That's right.

Q You weren't going to help them?

A How could I help them? They had all the information; I didn't have it.

Q But you knew what you got during those years?

A I had no idea what I got in dollars and cents.

Q So you yourself never kept any records of what your income was during 1966 and 1967; is that what your present testimony is?

A My present testimony is that I knew what I made moneywise, and I took premiums from the business. Exactly what the premiums amounted to, I don't know.

Q In other words, your present testimony is that in 1966 and 1967 you did not keep records sufficient to make up an income tax return with regard to the goods and merchandise you received through the premium program; is that it?

MR. BERMAN: I object to it as not a correct statement of what his testimony was. He didn't say that at all. The records were in these purchase orders.

THE REFEREE: He may say that isn't what he said. I'm going to allow it.

MR. BERMAN: When he is summarizing the testimony he's supposed to summarize it

correctly.

THE REFEREE: I agree with you, but I'm going to allow it.

A Well, I didn't say that, and I did keep records by the purchase orders.

Q Your own personal records.

A. Well, they were there for me to extract them if I thought I had to pay taxes on them.

Q All right. In 1967 you still had all the records of John Licht, Inc. for 1966; right?

A Yes.

Q And furthermore, did you ever make any request of the trustee of John Licht, Inc. for access to these records for the purpose of computing your correct income tax for 1966 and 1967?

A No, I didn't.

Q Otherwise you just sat back and if the government could get something on you, fine, and if they couldn't, you were going to let it go; is that right?

MR. BERMAN: I object to that as another unfair summary of what he didn't say.

THE REFEREE: I will sustain the objection.

Q Now, we have here Exhibits B and F, F being for the year ending December 31, 1966, and B being for the

year ending December 31, 1967, which indicates that you have a balance due to the Internal Revenue Service of $3,154.16 for the year 1966 and $3,027.50 for the year 1967.

What are the dates on these statements?

A June 12, 1972.

Q They are both June 12, 1972?

A. Yes.

Q All right. So they came this week, didn't they?

A Yes.

Q After this proceeding had already started?

A Right.

Q Have you paid these?

A There's no way I can possibly pay them.

Q So as a practical matter, the mere fact that the audit has been made and settlement agreed upon and a statement rendered, it still doesn't mean the government is going to get its tax money; is that right?

A There's money waiting before that for the government.

Q What is that?

A There's money ahead of that.

Q What do you mean, "money ahead of that"?

A Withholding taxes that I still haven't paid them for, for which they've taken away my life insurance policy

and anything else that I've had.

Q In other words, you were personally liable for withholding taxes of John Licht, Inc., which were not collected and paid to the government; is that right?

A That's right.

Q On employees of John Licht?

A Right.

Q Now, you have testified that today -- that you met with, in March of 1967, you met with Mr. Maize, is that M-a-i-z-e?

A Yes.

Q Of the AC Division of General Motors to discuss the indebtedness of John Licht, Inc.

A Yes.

Q At the time you met with Mr. Maize, how much money did John Licht, Inc. owe to General Motors?

A It was over $300,000. I don't recall exactly.

Q Was it $360,000?

A It was over $300,000. $360,000 is over $300,000.

Q What was the substance of that discussion that you had with him?

Let me take it back a little bit.

MR. BERMAN: Do you want him to answer that question?

MR. STERN: No, I withdraw that question.

Q At the time you had the discussion in March of 1967 about what was then owing, was this debt past due?

A Yes.

Q In other words, General Motors had come to you and said, "Look, John Licht, Inc., you owe us over $300,000, here, how are you going to pay it? Is that right?

A That's right.

Q So that's when you went down and talked to them?

A No. I knew I owed them the money before that and I told them I was in the midst of refinancing my business through factoring and then when I got the money I arranged a meeting with them -- they didn't come to me, I went to them.

Q But there had already been discussions as to the past due accounts and how you were going to pay it, right?

A Of course there were discussions about the past due accounts.

Q So they called you and they said, "You owe money," and you said, "Hold off, fellows, I'm going to try and raise it." Isn't that what it was?

A Not in those words.

Q In substance.

A In substance.

Q Right. Then you went out and you tried to raise it, right?

A Yes.

Q How did you try to raise it?

A. By factoring.

Q With whom?

A Transamerica.

Q And by factoring, you mean that you were going to assign your accounts receivable at a discount; is that right?

A Yes.

Q And what arrangement did you come to with Transamerica?

A We went into a financing agreement on March 1st.

MR. BERMAN: What year?

THE WITNESS: 1967.

MR. STERN: That's right.

Q And what did you assign to Transamerica?

A My inventory and my accounts receivable.

Q All of your then existing accounts receivable?

A Yes.

Q All of the accounts receivable then on the

books of John Licht, Inc. Is that right?

A That's right.

Q And what was the sum total of all those accounts receivable?

A I don't know.

Q Well, how much money did you get from Transamerica?

A $400,000.

Q So that the accounts receivable were probably some sum above $400.000?

A No, the loan was made on --

Q On inventory also?

A -- on inventory, and I gave them our buildings also as security.

Q You gave them second mortgages on the buildings; right?

A Yes, I think so.

Q At that time all the buildings had existing first mortgages, didn't they?

A I don't think all of them.

Q Well, those two newer ones did, didn't they?

A I don't recall.

Q The newest one?

A The newest one had a mortgage.

Q How much of the money that you got from Transamerica was on inventory and how much was on accounts receivable?

A I don't know.

Q Did the accounts receivable come to some $260,000-odd?

A I don't know.

Q Well, of the accounts receivable that you assigned, were they all then good accounts receivable?

A We assigned them in bulk.

Q That's right.

A There was those A.C. bills on the books at the time.

Q As a matter of fact, weren't there some $120,000 worth of fictitious accounts receivable included in that lump sum of accounts receivable that you assigned to Transamerica?

MR. BERMAN: Your Honor, I object to that as a conclusion, a characterization that --

THE REFEREE: I am going to allow it.

A Yes.

Q At the time you assigned the lump sum account receivable over to Transamerica you knew that there were fictitious accounts receivable in that amount, right?

A Yes.

Q At some time those fictitious receivables were going to come due, weren't they?

A Yes.

Q And when they did and Transamerica tried to collect them and couldn't, they were going to charge back your account for that, weren't they?

A No, because if we had the AC material we would have shipped it out and we would have been able to pay off those invoices.

Q In other words, at that point you gave them the fictitious accounts receivable in the anticipation and the hope that when they came due you'd be able to cover; is that right?

A That's right. There shouldn't have been any problem in covering.

Q But you didn't then have the funds available to do it?

A No.

Q This was contingent upon being able to get more merchandise and sell it and raise the cash?

A Yes.

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Q Well, wasn't there $100,000 worth of notes that Admiral had discounted?

A Yes.

Q That you found out about in November and December of 1966?

A Yes. No, I found out later than that; I found out in February, when they started coming due.

Q February of 1966?

A Seven.

Q February of 1967 --

A I don't even know if it was February. In fact, I don't know when the first one -- It could have been even in March. I'm not sure.

Q All right, let's see if we can find out.

On November 6th of 1967, on page 166 --

November 29th, page 21, November 29, 1967.

MR. BERMAN: What page are you reading from?

MR. STERN: Page 21, at Line 22,

Q "Question: Isn't that so, that it was the Admiral note that you gave that caused your problem?

"Answer. At the end of 1966, the Admiral note caused my problem, that became due at the

beginning of 1967 and prior to that Admiral met all of his notes."

Does that refresh your recollection as to the time when --

A No.

Q What does the beginning of 1967 mean to you?

A January.

MR. STERN: Going to page 24, starting at line 13, and this is the continuation of an answer: "At the end of 1966 there were notes that I didn't know were out that Admiral had of mine which became due, I believe, in January or February of 1967, and that is when I had a problem.

"THE REFEREE: How much was that amount?

"THE WITNESS: The notes was a series of $100,000."

Q Now, does that refresh your recollection as to when you became aware of the Admiral notes?

A I answered it then the same way I answered it today.

Q January or February --

A I wasn't sure then either, when the first note became due that I was aware of it.

Q And going to November 6, 1967, at page 166,

line 12:

MR. BERMAN: I'm sorry. When?

THE REFEREE: November 6th.

MR. BERMAN: Page what?

MR. STERN: 166.

Q "Question: And yet all of this was not sufficient for you to be able to pay your bills when due, was it?

"Answer: I paid my bills when due most of the time. I only ran into trouble when I couldn't meet my obligations in December of '66."

Do you remember being asked that question and giving that answer?

A Well, I was asked it if it was in the testimony. I don't recall it.

Q But you don't dispute that that was your testimony?

A No, of course not

Q And your answer is the same now as it was then?

A But it's not pertaining to what you just asked me about the notes. You've got me confused. You're on two different things now.

Q I apologize. Well, does that refresh your

recollection as to whether you knew about these Admiral notes prior to March of 1967?

A Definitely not. There is nothing there that refreshes my memory, because I was guessing then as to when the first note became due.

Q What caused you to call a meeting of your creditors?

A A meeting of the creditors was not called in March; a meeting of creditors was called in May.

Q You were having financial problems in March, weren't you?

A I was having financil problems at the end of November because the bank didn't renew my loan, that's when I ran into problems, on November 30th. I had obligations to meet and I didn't have the money.

Q Well, aside from notes that you owed -- Let me ask you this: What was the reason why you had given Admiral the notes in the first place?

A To discount, for me to raise money to clean up the bank.

Q In other words, these were going to be accommodation notes?

A Yes.

Q And you were going to give the notes to

Admiral and Admiral was going to try and discount them, and if Admiral discounted them, then they would give the money to you?

A Yes.

Q And when the notes came due, you would give Admiral the money to pay the notes; is that correct?

A Well, they were my notes so --

Q Well, you would pay the notes?

A Yes.

Q Under what circumstances were these notes issued without your knowledge?

A When I presented the notes to Admiral, to Sy Lichten, in August --

THE REFEREE: L-i-c-h-t-e-n.

A -- I met with Mr. Lichten in the latter part of August and I explained to him that I am in the process of cleaning off my bank loan, and if he could discount some notes.

So he says how much am I looking for.

I said I would like to get about $100,000.

He says, "All right, let me have some blank notes, and I'll see what I can do."

So I gave him five, I believe five, notes which I signed in blank, and I gave it to him, and I

contacted him about two weeks later, and I said, "Well, how did you make out with the -- raising the money for me?"

He says he couldn't do it.

I says, "All right, then let me have the notes back."

So he says to me, "Well, I disposed of them. I ripped them up and threw them away," and I'd been doing business with the man for fifteen years, and I wasn't aware of the kind of person he really was.

Q What was the point in leaving the amount blank?

A Because he didn't know which way he could discount with some -- what the factors he was discounting with would take.

Q Did you leave them blank because you hoped he would get as much money as he possibly could, and if he could have gotten more than $100,000 you would have taken that?

A No, I only needed $100,000.

Q What were the circumstances under which you first found out that these notes had been filled in and discounted?

A The first one -- I first became aware of it when the note came to my bank for payment, and I wasn't carrying

enough balance for the bank to pay it without questioning me.

THE REFEREE: When this came to your bank, what happened?

Tell me what happened.

THE WITNESS: Well, the bank called me up and said, there's a note presented for payment, for collection, I should say, or whatever you call it, for the amount of -- I don't know how many thousand dollars it was --

Q Was it $20,000? $30,000?

A I don't know. There was all different amounts.

Q It was a substantial amount?

A Each one was substantial, each one was near the $20,000 amount or somewhere over.

Q And this, of course, was sometime between August of 1965 and March of 1967; is that right? August of 1966 and March of 1967; is that right?

A Could have been after March of 1967 also. I'm not sure exactly when the first one came due.

Q Well, let's take the period from August of 1966 up to, say, June 1st, 1967.

A All right.

Q Did you know about these notes before you filed the petition for John Licht, Inc., on June 1st of 1967?

A It was because of these notes that I filed the petition.

Q All right. So it was sometime before June 1st; is that right?

A That's right.

Q Did you know about these notes being outstanding at the time you called a meeting of your creditors in the beginning of May?

A I believe I did.

Q So we know that you knew about it sometime before the beginning of May, right?

A We can guess at this all afternoon.

Q Well, we're not guessing; we're in the process of elimination. We're trying to narrow down the period of time in which you became aware of the existence of these notes.

A I'll narrow it down closer. It could have been anywheres in February, March and April.

Q It could have been in February, March or April?

A Right. Any of those months, yes.

Q During February John Licht, Inc., needed money, right?

A Yes.

Q Because then you were trying to find a factor?

A That's right.

Q And you signed the factoring agreement between sometime in February and March 1st?

A No, we signed it exactly on March 1st.

Q Taking the month of February, did you find out about these before you signed the factoring agreement?

A I don't know. I don't recall if it was February, March or April.

THE REFEREE: Off the record.

(Discussion off the record.)

Q There is no question, is there, that during February, March, and April you were engaging yourself in trying to secure more money for John Licht, Inc; is that correct?

A Yes.

Q What was you reaction when you found out about these notes?

A I was infuriated by it.

Q Actually, this was the final blow, wasn't it?

A No, it wasn't the final blow because when I confronted him with the first note that came due I don't recall whether he did make it good or he called it and paid it himself and then he told me -- I asked him if there were any others, and he said no. He lied to me again. So I didn't know until

the next month that there was another one.

Q This was a man whom you thought had been a friend of yours?

A That's right.

Q Whom you thought you could trust?

A That's right.

Q And he double-crossed you?

A You'd better believe it.

Q Wasn't that a traumatic psychological event for you?

A It certainly was.

Q And didn't it burn itself into your mind as to when it happened and where it happened?

A Not a thing, no. It didn't burn itself into my mind. The fact that it happened was well burned in there, and everything around it is well burned, but exact dates is not burned into my mind.

Q How did you handle the problem of the -- Withdraw that.

Going back to this $119,000 worth of fictitious invoices which created the equivalent amount of fictitious accounts receivable, did the people against whom those invoices were made know of their existence?

A Yes.

Q Had you prearranged with them before you did this that you were going to do it?

A It's been a practice of doing this --

THE REFEREE: The answer to that is either yes or no.

THE WITNESS: Yes.

Q You did prearrange?

A Yes.

Q These people with whom you did this -- by the way, do you remember their names?

A Yes.

Q Is one of them Essex Warehouse Company?

A Yes.

Q Is that the company you are presently employed by?

A Yes.

Q And was another one Clang?

A No.

Q A&D?

A Yes.

Q Jade?

A Yes.

Q There were about six or eight of them, weren't there?

A I didn't even count them.

Q Do you remember the other names?

A Yes.

Q What were the other names?

A Harry Smith. I think a Kraft.

Q Republic Battery?

A Republic Battery.

Q That was another company you were employed by after you left John Licht?

A Yes.

Q These people, if they knew about it beforehand, did -- Withdraw that last question.

Now, the people whom you had made this prearrangement with, of course, didn't expect to have to pay these invoices, did they?

A No.

Q How was it contemplated that you would arrange that they wouldn't have to pay the invoices?

A Because of a practice that was going on for twenty, thirty years.

Q Describe the practice?

A Preinvoicing AC material, and I sold it to non-AC accounts. I would take their money and I would deposit it against these invoices.

Q How did you handle these specific invoices, these $120,000 worth?

A What do you mean, how did I handle them?

Q How did you wipe them off the -- how did you neutralize them so that these people didn't have to pay them?

A At the end, when there was nothing left to do, I issued credits to offset them.

Q And the credits were just made up out of your head?

A That's right.

Q Just as the invoices had been in the first place?

A Yes.

Q Well, why was it that you couldn't get the AC merchandise to sell to credit against these fictitious invoices?

A Because I was in financial troubles, and they weren't shipping.

Q Well, you just made an arrangement with them in March where they extended you credit, hadn't you?

A But it wasn't enough -- enough merchandise didn't come in to offset the $119,000.

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MR. STERN: This is the testimony of October 18, 1967, page 86.

"Question: It was the Westinghouse merchandise that you were making deals with?

"Answer: No, I made special deals with General Electric merchandise, too.

"Question: But it is a fact that all of the Westinghouse merchandise was sold at less than the invoice price?

"Answer: Yes.

"Question: And it was sold to various people on special deals; is that right?

"Answer: Yes."

Q Do you remember being asked those questions and giving those answers?

A Yes.

MR. STERN: October 23rd, 1967, at line 21:

"Question: Would you take that 14½¢, compute the discount of 24½%, and the other discount" --

MR. BERMAN: Wait a minute; wait a minute. I think you ought to start from the beginning, really. This has to make sense.

You should start from here:

"Question: You paid 14½¢."

THE REFEREE: Yes, I suggest you start from the beginning, to get a clearer picture of it.

MR. STERN: Starting from line 15:

"Question: You paid 14½¢ to Westinghouse for the bulbs, according to that invoice; is that right?

"THE REFEREE: Less 24.

"Answer: Less 24.54% cash, less 2% cash discount, less approximately 1% kickback.

"Question: Would you take that 14½¢, compute the discounts of 24½% and the other discounts and tell me what you come out with net.

"Answer: I think if I am not mistaken, 10½¢.

"Question: This is the net price that

it cost John Licht, Inc. for the lamps purchased from Westinghouse?

"Answer: Yes.

"Question: This is after all the discounts and credits or repayments that you testified to?

"Answer: Yes.

"Question: And then you turned around and you sold these very same lamps to Klang at 9½¢; is that right?

"Answer: Yes."

Q Do you remember being asked those questions and giving those answers?

A Yes.

Q Does that refresh your recollection as to whether you ever testified that you bought Westinghouse bulbs for 10½¢ and sold them for 9½¢?

A That's not what you said to me before. You said to me if I sold them for 10% below cost. I didn't talk about any percentages.

THE REFEREE: No, the question Mr. Stern asked you was do you recall -- and that was objected to by --

MR. BERMAN: I objected to 10% below cost.

THE REFEREE: No, he said 9½, bought for

10½¢ --

MR. STERN: And sold for 9½.

THE REFEREE: 9½ cents.

MR. STERN: Cents.

THE REFEREE: Yes.

MR. BERMAN: Now, what percentage is this? He asked for the percentage originally when I objected.

THE REFEREE: No. If you go back, it is "cents."

MR. BERMAN: Cents.

THE REFEREE: Your objection was to not the percentage, but you wanted the testimony read.

MR. BERMAN: Right.

Q Now the testimony has been read as per your lawyer's request, and does that refresh your recollection?

A Yes.

Q Fine. Now, what was John Licht, Inc.'s profit margin when it was buying large quantities of Westinghouse merchandise and selling it at a penny a bulb less than it was paying for it?

A Well, in that particular transaction we were losing money.

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MR. STERN: No, this was not identified.

THE REFEREE: That will be Exhibit 24.

(Received in evidence as Trustee's Exhibit 24 of this date.)

Q So that actually, in March of 1967, when you executed these guarantees on the Westhinghouse merchandise--with Westinghouse, or executed that note with Westinghouse, you already knew that your mother and father had personally guaranteed the Westinghouse purchases back in the summer of 1966; isn't that correct?

A I don't know; I don't think I gave it a thought.

Q Well, who arranged the Westinghouse purchases?

A I did.

Q You were familiar with the transaction?

A Yes, I was.

Q And were you aware at that time that your father personally guaranteed this, and your mother?

A Yes, I was.

Q So that in March you were also aware of it, weren't you?

A I don't see where the connection comes in.

THE REFEREE: Whether you do or not --

THE WITNESS: I said I am aware of it, but I don't understand you.

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Page 128 - line 19 to page 147 - line 11

Q Who was the accountant that Mr. Berman brought out? Was that Leon Radin?

A It was his firm. Sidney Lautt.

Q Leon Radin & Company; that's what it is. And did Leon Radin issue or prepare a report of examination of the books and records of John Licht, Inc. as of April 25, 1967?

A Yes.

Q I show you a document which has previously been marked Trustee's Exhibit 1 of August 8, 1967, and ask you if this is a copy of that document.

A Yes.

MR. STERN: I offer this as an exhibit.

MR. BERMAN: May I see it for a moment.

MR. STERN: Yes, here, Mr. Berman.

(Marked Trustee's Exhibit 25 of this date.)

THE REFEREE: Is that dated April 25th?

MR. STERN: As of April 25th. The date of this report is May 3, 1967.

Q Wasn't it true, then, that you actually contacted Mr. Berman before May of 1967?

A Maybe the last week in April.

Q Perhaps the last week in April?

A Maybe.

Q Well, this is dated May 3rd. Now presumably you contacted Mr. Berman and he contacted his accountant and he came in and he made an audit and prepared a complex report as of May 3rd. Was all that done between May 1st and May 3rd?

A I said possibly the last week in April.

Q Well, wasn't it probably?

A Probably.

Q Wasn't it, in fact, prior to May that you contacted Mr. Berman?

A Probably it was. I don't recall. I'm telling you I don't recall. You show me May 3rd, I will agree that it was in April, the last week in April. I'll give up; you win. The last week in April.

Q I am trying to refresh your recollection to help you testify accurately.

A You're trying to put words in my mouth. There's a difference.

THE REFEREE: We've had enough of that now, Mr. Licht. Mr. Stern is examining perfectly properly. He has a right to inquire. He has a right to inquire as to dates, and he's doing it.

THE WITNESS: But if I don't remember an exact date, your Honor, should I lie and say I do?

THE REFEREE: No, but he is attempting to establish certain dates, and he's doing it in a perfectly proper manner.

THE WITNESS: But he says "the last week in April," and I say "Yes," and then that's not good enough either.

THE REFEREE: That may not be. He has a

right to probe. This is cross-examination, and this is exactly the purpose of it.

THE WITNESS: I'm sorry, your Honor.

MR. STERN: Off the record. Your Honor, could I address the witness off the record?

THE REFEREE: There is nothing personal, he is trying a lawsuit.

Q Isn't it a fact that you contacted Mr. Berman prior to May?

A Yes.

Q So that would be -- Did you contact him in March?

A No.

Q Did you contact him in April?

A Yes.

Q I gather that after Mr. Radin or Mr. Radin's firm came on the scene, that either he or somebody from his accounting firm came down to the premises of John Licht, Inc., to examine the books; is that correct?

A Yes.

Q And were you there when that was done?

A I was there. I wasn't sitting with them; I was in the office. I was in the premises.

Q I see. And you assumed that he would examine

the accounts receivable; is that correct?

A He examined everything.

Q At the time this accountant examined the accounts receivable, did you tell him anything about those accounts receivable?

A No.

Q Did you tell him that approximately $120,000 of those accounts receivable were fictitious?

A No.

Q Did you know that he was going to use the figures in that book insofar as the accounts receivable were concerned to prepare this report?

A I would assume that he would use the figures that were available.

Q What was your understanding of what the purpose of this report was?

A To see the condition of my business.

Q Didn't you understand that it was going to be shown to creditors at the creditors' meeting?

A Originally when he took the statement it was to see what we were doing before we had any thought of going to creditors. We had to first find out what condition I was in before we had any thought of going to creditors.

Q Well, actually, the condition he found out

was not the condition as you knew it was?

MR. BERMAN: May I see this.

MR. STERN: Here (handing).

Q Isn't that true?

A I didn't think about those invoices.

Q You knew about them?

A. I knew about them, but I didn't give them a thought; I didn't know what the total amount was.

Q Did you see that report after it was completed?

A Yes.

Q Did you look at it?

A Yes.

Q Examine it?

A Yes.

Q Did you examine the accounts receivable?

A I looked at every facet.

Q And when you looked at every facet of it and when you looked particularly at the listing of accounts receivable, did you say, "Oh, this isn't correct. $120,000 of these are fictitious"?

A No, I didn't. I didn't think about it.

Q You didn't tell your own accountant that you had retained to help you through your financial problems;

is that right?

A No.

Q Were you at creditors' meetings when that was shown to creditors?

A Yes.

Q Did you say anything at those creditors' meetings as to whether or not that was accurate in all respects?

A No.

Q You just sat there and let the creditors look at it and examine it and see what the assets were, and you knew that wasn't correct?

A I didn't think about it. I don't recall thinking about those invoices.

Q When was the next time you thought about those invoices?

A When I went to credit them off the books, to get them off the accounts merchandise.

Q Why did you remember them then?

A Well, they became pretty past due with the factor.

Q When did you credit them off the accounts receivable?

A Before I went out of business.

Q Just before you went out of business, in fact,

it was one of the last acts you did at a time when you had any control of that business; isn't that right?

A Well, it was within a week or two before I went out, I believe.

Q So what it comes down to is when you were dealing with your creditors at the creditors' meetings these invoices didn't occur to you, but that just before you went out of business you then remembered your friends and wiped the invoices off; isn't that what it comes down to?

A It came down to I didn't want to create any more problems for people that weren't their fault, and so I took them off.

Q Well, were your problems the fault of Westinghouse?

A No.

Q Were your problems the fault of General Motors?

A That we can go into a lengthy discussion, but I'll say, no.

Q Were your problems the fault of General Electric?

A No.

Q You didn't worry about creating more problems for them even though they didn't create any for you?

A If AC didn't create problems for me, those bills wouldn't have been on the books in the first place; if they didn't dictate who I should sell and who I shouldn't sell, I wouldn't have to make out invoices like that. Basically, they're the ones who created the problem.

Q What do you mean, if they didn't dictate who you should sell and who you shouldn't sell?

A Well, it's my understanding that once we buy merchandise, we can sell anybody we want to, and that if a company we buy from tells us we can't sell to somebody, it's in restraint of trade, and it was the practice of AC to dictate to us who we should sell and who we shouldn't sell, so if we wanted to sell somebody who was not approved by AC, we had to bill somebody else for the material in order to receive compensation for it.

Q Didn't it go a little farther than that? Wasn't it true that actually you could sell your AC material to anybody you wanted to, but that how much AC charged you for it was determinedby who you sold it to; isn't that more the correct --

A I just said that. I just said that in order to receive compensation we had to bill it to other people.

Q In order to receive extra compensation.

A Compensation, no compensation.

Q Isn't it true that if you sold to an AC-approved jobber, you would get a higher discount than if you sold to, say, a retailer or to a final consumer?

A No, that's not what I said. I said that if you're a jobber and Mr. Berman's a jobber, by all standards of the word "jobber," AC would dictate that I can sell you, but I can't sell to Mr. Berman.

Q And if you sold to Mr. Berman instead of me, they charged you a different price; is that right?

A That's right.

Q So in order to get the higher discount --

A That's where these invoices were created. I would bill you instead of billing Mr. Berman, and when Mr. Berman paid me, I would credit it to you.

Q So what you're saying actually is that this $120,000 worth of invoices represents merchandise you actually sold to somebody?

A That was anticipated to be sold to somebody. I was trying to get the invoices on the books pending a shipment coming in.

Q That was anticipated you would sell to somebody. In other words, you hadn't sold that as yet?

A Let me explain something to you about the AC material. Every month we received $100,000 worth of

merchandise or thereabouts, upwards, mostly upwards. For thirty-five years. We'd get it in one day; two days later every bit of the merchandise was sold, and I could have sold $235,000 worth, I could have sold $500,000 worth; the merchandise was in demand. At no profit basis, but it was in demand. So it wasn't an assumption that I was going to sell it. I had customers who all I had to do was call them up and say, "I'm sending you down material," not, what am I sending them, "I'm just sending you $30,000, $40,000, $50,000 worth of goods," and they would accept it and pay for it. So it was no problem. Every month these invoices were put on the books and by the end of the month they was always taken off, because the merchandise was sold and they were credited out.

Q Well, that being the case, what was the point in putting them on the books in advance?

A Just so that when we were audited by AC it wouldn't look so obvious, what we're doing, because we were constantly audited, as well as every distributor throughout the country is audited, where they try and catch you at selling other people, which is a common practice in our business.

Q Mr. Licht, accepting everything you say, why was it necessary to put these invoices on the books before sales were created? Could you not have accomplished the

same thing just by crediting different people after the sales were created?

A This was my method of doing it. Yes, you could have done it the other way. This was the way we chose to do it because we were never picked up on it, by doing it that way, so we had a successful way of doing it where the auditors would come in and wouldn't give us chargebacks.

Q Weren't you afraid that they'd come in and say, "Hey, you're carrying all these sales on your books and we haven't shipped you that merchandise yet"?

A How can they possibly pinpoint it that close within thirty days? No way, no how.

Q This was just your way of doing it. In other words, in order to fool AC you'd throw these invoices on the books before you made the sale, and that in some way had greater effect than if you just credited them to fictitious accounts after the sales?

A Yes. This way we were able to put them on at different times where it looked more plausible, that I didn't make $100,000 worth of sales to ten guys in one day.

Q Isn't it true that AC would come in and audit your books and based on the amount of sales you had made they would give you rebates?

A No. It's not true. AC only gave us rebates,

compensation, on what we submitted, on the monthly forms that we submitted to them.

Q And were these invoices on the monthly forms that you submitted to them?

A Of course they were. That's how we got our compensation.

Q So, in other words, you got compensation from AC for sales before they were made and before the actual accounts were created, right?

A I'm telling you that up -- prior to the time when they didn't ship me, the merchandise was shipped in the same month as the bills were on the books.

Q But that's not the answer. The question is that you would receive compensation from AC for sales which were on your books which had not in fact been made?

A No, that's not true. Because if it was on the month-- If I put the bills on June 1st and June 15th I've gotten the merchandise and I got paid for it that month I didn't make out my report until June 25th.

Q The $120,000 worth of receivables that was assigned to Transamerica in March which you testified were fictitious, when were those receivables created?

A They were created in probably October, November, around there.

Q October or November of --

A Of 1966.

Q -- of 1966. And when had you anticipated that you would get merchandise to create the sales to make those invoices good?

A Well, if I put them on in November, I anticipated getting merchandise in either November or early December, whenever the merchandise would hit.

Q And why didn't you get merchandise in November or December?

A Well, November it was -- we ran into either a price increase, that merchandise went on allotment, or a strike; it was one of the two that happened then, which was another problem we met every once in a while.

Q Which you couldn't anticipate?

A No, you never anticipate a strike -- Well, a strike we can anticipate because they knew that it was going to happen and they would always give us another month or two of supplies until it was settled, so we always had merchandise, but the thing that was the worst part of anticipation was when there was a price increase, because then they couldn't ship you the goods that you normally got; they put you on an allotment.

Q Had that ever happened before?

A Oh, yes, many times.

Q So this was a risk you were taking that something like this would happen?

A No, it just was an extra month of manipulation --

Q Just an extra month --

A -- or two.

Q All right. So we go through November, December. Why couldn't you get enough merchandise in January to pay off these invoices?

A In January already I was in my financial problems from December.

Q So you were carrying these fictitious invoices on the books from October, November, December, January. Now, had you already received compensation from AC from these sales, these fictitious sales?

A Yes.

Q So you couldn't just go wipe them off the books?

A Well, you could wipe them off the books by crediting them out as a different type of merchandise.

Q But you didn't do it?

A No.

Q Because if you had done that you would have had to pay money back to AC, isn't that right?

A No, if I put it as a different type of merchandise

I wouldn't have to pay money back.

Q Well, if you wiped off the sales for which you'd already been compensated, wouldn't you have to pay AC back the compensation you got?

A No, I do other business with these accounts besides AC material. AC is only one line out of two hundred lines I handle.

Q In other words, you would use cash from sales of other merchandise to take care of the AC sales; is that right?

A Well, credits we're talking about now, aren't we?

Q I don't know. What are we talking about?

A I don't know. You asked me the question. You said if I took --

Q Well, I asked you why you couldn't just take the AC sales off the record, in some way cancel them out, and you said you'd already gotten compensation for them, right?

A Just cancel them out like that, that's right, I couldn't just cancel them out.

Q You couldn't say, "Hey, I made a mistake. I didn't really make these sales"?

A No, then they'd charge me back.

Q They would charge you back. O.K.

THE REFEREE: By "charging you back," you mean your price would be increased?

THE WITNESS: Well, say if I put in $100,000 of reported sales, they would give me a credit of $10,000, 10%. And if I just credited those invoices off, when the auditors come in they would see that it was just credited, and they would charge me back the $10,000.

THE REFEREE: The $10,000 --

THE WITNESS: Compensation.

THE REFEREE: -- bonus.

THE WITNESS: It wasn't a bonus, your Honor, it was in our margin of profit.

When we bought AC material, the warehouse usually worked at 20% profit, AC would bill us at jobber price, less 10%, less.

THE REFEREE: Less 10% because you were a --

THE WITNESS: A warehouse.

Then when we sold the jobber, they would give us an additional 10% of our purchases.

And, incidentally, this here method has been such a flop and such a failure throughout the country, that they've all but eliminated this procedure and they give me the full twenty off the

invoice because they can't control their accounts from doing exactly what I'm telling you now. Every one of them do it; it's a practice in our industry to do it, that if we buy $100,000 worth of AC material in the course of a year, we're going to make sure we get our full 20% on it.

Q Are you suggesting that it is a practice in your industry to create false accounts receivable for this purpose?

A Absolutely.

Q And do you feel that the fact that this is a practice in your industry in some way justifies your doing what you did?

MR. BERMAN: I object to the question.

THE REFEREE: I will allow it.

A I certainly do.

Q Actually, if you just wiped off those false accounts, in addition to being charged back for the compensation, you would also have to explain what happened to those accounts, wouldn't you? Wouldn't that kind of arouse the curiosity of the General Motors auditors?

A As long as the money was charged back, that's all they're concerned with. And if you would audit General Motors' books and see the chargebacks they made to their

customers throughout the country on just this thing, the people they caught, you'd be amazed.

Q If they charged you back, all they would do, in fact, was debit your account for an additional $10,000, isn't that right?

A Yes.

Q You wouldn't have had to come up and pay them $10,000 cash - right? Or whatever it was?

A When I owe them $300,000 or $400,000, I'm not going to have to pay them $10,000 in cash.

Q All right. So the fact of having this compensation charged back in and of itself wouldn't have caused you any great distress, would it?

A I wouldn't have liked to pay back $10,000 of which, when I sold it, I didn't make that kind of money. It had to be sold at a competitive price.

Q You hadn't even sold it yet, right? You hadn't even gotten it yet, right?

A True.

Q So all we're talking about is a ledger entry on your account with General Motors, right?

A Yes.

Q And yet you still kept these on your books, from October, November, December, January, February, March,

April, May, right into June, just before you went out of business, and then you wiped them off to protect your own personal friends; isn't that right?

A Not to protect my personal friends, to protect people I was doing business with. They weren't personal friends.

Q To protect people you were doing business with, including among those -- among which are two of whom you have subsequently worked for: Republic and Essex; isn't that right?

A That's right.

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Page 3 (line 6) - 15 (line 11)

John Licht, Inc., the bankrupt knowingly and fraudulently falsified, or made a false entry in documents affecting or relating to the property or affairs of said John Licht, Inc., to wit: (a) entries representing accounts receivable were made in the books and records of John Licht, Inc. for merchandise which was not actually sold by it.

I will proceed with that Point 2(a).

EXAMINATION

BY MR. STERN:

Q Mr. Licht, do you remember sometime in November and December of 1966 creating invoices for goods not actually delivered to the account of Midwood Automotive Distributors on behalf of John Licht, Inc.?

A Midwood was one of the accounts we billed, yes.

Q When you say you billed, I assume that you also sold Midwood merchandise for which they were billed; is that right?

A Yes.

Q Did you also create invoices during that peri-

of time for merchandise which was not sold but which was placed on the books of John Licht and as representing goods sold?

A We pre-invoiced them, yes.

Q What do you mean by pre-invoicing?

A Well, with anticipation of shipments coming in, we pre-invoiced Midwood for goods that we were going to sell to somebody who wasn't an authorized agent jobber.

Q In other words, you invoiced Midwood for certain goods for somebody -- for certain goods which you were going to sell to somebody other than Midwood?

A Yes.

Q Did you subsequently get in those goods that had been invoiced to Midwood and sell them to the other party?

A No, we had problems getting the merchandise and then we couldn't ship the goods to other people and take them off.

Q Were these invoices entered on the books and records of John Licht, Inc. as representing valid accounts receivable?

A They were entered in the records.

Q As accounts receivable?

A Yes.

Q From Midwood?

A Yes.

Q Now, in fact, at that time was it ever contemplated that Midwood would pay those invoices?

A No.

Q Did this occur in December ~~1966~~?

A What's the month?

Q December of 1966?

A It occurred in 1966. I don't know what month. It could have been much prior to that.

Q I'm reading from the transcript of July 11, 1967.

MR. BERMAN: Your Honor, I think the best evidence would be the invoices. I think counsel should produce the invoices. We can tell from the invoices what the dates were.

THE REFEREE: Well, let's see. I'm going to overrule your objection. Mr. Stern evidently wishes to use the record to refresh Mr. Licht's recollection with regard to his testimony at some other time.

MR. STERN: Yes.

On page 19 of the transcript of that date it says: "Tell us why $27,000 worth of AC merchandise was returned by Midwood and entered on the

books June 20, 1967.

"Answer: Because they would wipe off invoices that appeared in November and December 1966 from pre-invoicing the merchandise that was not shipped."

Now, do you remember being asked that question and giving that answer?

A No, I don't recall, but I just answered it the same way now.

Q Well, does that refresh your recollection as to whether any of these invoices were entered on the books in December of 1966?

A Not really.

Q Well, this testimony was in July of 1967 which is some five years ago. Was your recollection fresher then than it is now?

MR. BERIAN: Your Honor, I object to it as argumentative.

MR. STERN: I can refresh his recollection.

THE REFEREE: I'll allow it.

Q Was your recollection fresher five years ago than it is now?

A I would imagine it would be, but I don't see how I possibly would know the exact dates of the invoices on the

books even then. I was approximating then like I am now, that it could have been in November and December, which I just said.

Q Your exact testimony then was (a)"because they would wipe off invoices that appeared in November and December 1966 from pre-invoicing the merchandise that was not shipped."

Now, was there any doubt in your mind then when you testified as I have just read to you?

A No doubt in my mind now that they were on the books.

Q In November and December of 1966?

A It could have been November and December, yes. It could have been December, too.

Q At that time were you dealing with a factor?

A No.

Q Subsequently you did make an arrangement with a factor; is that right?

A Yes.

Q The date of that agreement was March 1, 1967; is that right?

A That's right.

Q And at that time that you made the agreement with the factor, were the wipe-off invoices from November and December 1966 still on the books and records of the

company?

MR. BERMAN: Your Honor, I object to that on the ground that it is not within the issues. There is nothing here in relation to a factor. The only question here is as to whether or not these were false entries made in the books in contemplation of bankruptcy. It has nothing to do with what was on the books when he obtained factor, and I object to it.

THE COURT: Overruled.

MR. STERN: Will you read the question, please.

(Question read)

A Yes.

Q And those entries represented accounts receivable of John Licht, Inc., didn't they?

A Yes.

Q And were those accounts among the lump sum accounts receivable assigned to Transamerica Corporation, the factor?

MR. BERMAN: Your Honor, I object to it on the same ground, as not within the issues.

THE REFEREE: I'll allow it.

A Yes.

Q Were there any other customers of John Licht,

Inc. for whom false invoices were created and entered on the books?

MR. BERMAN: Your Honor, I object to the form of the question.

MR. STERN: Withdrawn.

Q Were there any other customers of John Licht, Inc. for whom invoices were created and entered on the books for goods which were not actually shipped?

A Yes.

Q Could you name those?

A Republic Battery, Harry Smith, Essex Warehouse, and Midwood.

Q Was there a company named Jade?

A Jade.

Q Was there another company called A&D?

A Yes.

Q Was A&D the actual name of the company that was involved?

A It was a name we billed them under.

Q What was the actual name of the company?

A Wonderama Automotive Discount Cities, Incorporated.

Q Do you have a brother-in-law named Arnold Friedman?

A No.

Q Who was Arnold Friedman?

A A customer.

Q Was he also a customer to whom you made out invoices not representing goods shipped?

A I don't think so.

Q During what period of time were these other invoices entered on the books and records of John Licht?

A Invoices of this type were entered on the books for about forty years that I was doing business with AC.

Q Now, during the period of December 1966 until the bankruptcy were any invoices to these other customers entered on the books and records for goods which were not actually shipped?

A No.

MR. BERMAN: Would you mind reading that question again? I'm not sure what it was.

(Question read)

Q Were any of these other invoices among the accounts receivable which were assigned to the factor?

MR. BERMAN: Same objection, your Honor.

THE REFEREE: Same ruling.

A I don't understand that.

MR. BERMAN: I object to the question because I don't know what it means. He said there were no

other invoices, and now he says, "were any of these invoices"?

MR. STERN: He said there were other invoices over a period of four years. And then I asked him whether --

MR. BERMAN: For forty years, he said he was doing this for forty years.

MR. STERN: For forty years?

THE REFEREE: I thought he said four, too.

MR. BERMAN: No, I think he said forty.

MR. STERN: I thought he said four also.

MR. BERMAN: I heard it, and he said forty.

THE REFEREE: Oh, forty.

MR. BERMAN: He said he had been doing this for forty years, with AC Products. Is that right? As long as he had been dealing with AC Products.

THE WITNESS: That's right.

MR. STERN: I'm glad we corrected that.

I don't know whether forty is better than four or not.

An explanation for Mr. Berman: I had asked him whether any of those were created -- whether any others were created between December '66 and time of the bankruptcy, and he said no.

MR. BERMAN: Then he said no. And then you said others, so I wasn't sure. I thought you meant what he just said no to.

THE REFEREE: Maybe you ought to clarify it.

Q In addition to the $27,000 in invoices not representing goods shipped which were invoiced to Midwood Auto and which were assigned to the factor, were there any other invoices or receivables on the books of John Licht, Inc. representing goods not actually shipped which were assigned to the factor?

A No.

Q Well, haven't you previously testified that there was approximately $120,000 worth of receivables which were not valid which were assigned to the Transamerica Corporation?

A Other than Midwood?

Q Other than Midwood.

A The other accounts, yes. That wasn't afterward; that was at the same time.

Q All right. So at the time you assigned the Midwood receivables you also assigned the receivables for Jade, Essex, A&D, Kraft, et cetera, which you just mentioned before.

A Yes.

Q Which also represented goods which were not shipped?

A That's right.

Q How old were the oldest of those invoices which you assigned to Transamerica at the time you assigned them?

A I don't recall.

Q Were they five months old?

A No.

Q How long did you carry a receivable like that on your books?

A Well, usually, when the merchandise was constantly being shipped in they usually were cleared off the books within thirty days.

Q And when did merchandise stop being constantly shipped in?

A By the end of November.

Q So that any of these invoices which in the normal course of your business would have been cleared off in thirty days would have dated from November or December, then; is that ~~right?~~

A Mostly from November, the latter part of October into November.

Q 1966?

A Yes.

Q Did any of them predate October of 1966?

A I don't recall; I doubt it.

MR. STERN: I will move on to Specification No. 2(b), which is that invoices were created for merchandise not sold or shipped by John Licht, Inc.

Q Now, Mr. Licht, I've just been asking you about entries in the books and records concerning invoices. I assume those entries were based -- the entries in the books were based on invoices which were made up; is that right?

A Yes.

Q In other words, you would make up a sheet of paper that said, "Bill to So-and-so, X dollars for merchandise," and that would then be given to a bookkeeper who would then enter that into the accounts receivable ledger; is that right?

A An invoice would be made out and the invoice would be handled in the usual manner the other invoices were.

Q So that for all of this $120,000-odd worth of accounts receivable representing goods not shipped, invoices were made out which in fact did not represent goods shipped or the person to whom they were even contemplated the goods would be shipped; is that correct?

A What was the last part of that, please?

MR. STERN: Well, let's break it down into two questions.

Q Invoices would be made out or were made out for goods which were not actually shipped?

A Yes.

Q And the invoices were made out to persons to whom it was not even intended that those goods would be shipped?

A That's correct.

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Pages 26(line 5) - 46(line 10)

Q Now, I have here a copy of the credit memo dated June 20, 1967, to Essex, which has previously been marked as Trustee's Exhibit 1 for identification of July 11, 1967.

I show this to you and ask you if you can identify it.

A Yes.

Q And is that a copy of a document which was executed on June 20, 1967?

A Yes.

Q What does that represent?

A Merchandise that was returned.

Q Well, was the merchandise listed on those sheets merchandise which was actually returned to John Licht Inc.?

A Part of it looks like it was.

Q Was there any part of it which wasn't?

A It's possible the second part might not have been. This was -- and, this is all the same thing.

Q Well, what is the total amount of the credit represented by this credit memo?

A $20,750 -- $21,000.

Q Was $21,000 worth of merchandise actually returned as represented by that credit memo?

A I don't think so. I think these were the bills that were on the books that I wanted to take off.

Q In other words, these were the wipe-off invoices from December and November of 1966?

A Yes.

Q So looking at that document now, is it true that it represents merchandise, at least in part, which was not returned?

A Yes.

Q Could you tell us now what proportion of the $21,000 represents merchandise which was not returned?

A I don't know.

Q Was it more than half?

A Possibly, probably.

Q Probably more than half?

A Yes.

Q Was it more than 25%?

THE REFEREE: Well, if it's more than half, it would have to be more than 25%.

MR. STERN: Well, he said "probably," and I wanted to pin it down to definitely, your Honor.

MR. BERMAN: He said he can't remember, too.

MR. STERN: Well, he might remember that it was more than 25% and not be as sure that it was more than 50%. I don't know.

THE WITNESS: It was probably more than 50%. I don't know. It might have been the whole thing.

MR. BERMAN: May I see that document.

MR. STERN: Yes, certainly.

THE REFEREE: Don't you have some testimony with regard to it?

MR. STERN: Yes, I'm going to find it.

THE REFEREE: Well take a few minutes so you can find what you are looking for.

MR. STERN: Thank you, your Honor.

(Pause)

MR. STERN: Your Honor, I would like to have this marked as Trustee's Exhibit No.26.

THE REFEREE: Do you have any objection?

MR. BERMAN: No.

THE REFEREE: So marked by the reporter.

It will now be Exhibit 26, that's right.

(Credit memo marked Trustee's Exhibit 26 of this date.)

Q Now, Mr. Licht, I show you another credit memo

issued to Midwood, also on June 20, 1967 --

THE REFEREE: Excuse me. Off the record.

(Discussion off the record.)

Q And again, this is a copy of the credit memo. Would you examine this?

A Yes.

Q Is that a copy of the credit memo that was issued by John Licht, Inc. on that date?

A Yes.

Q What is the amount of that?

A $27,041.09.

Q Does that purport to represent a return of merchandise of that value?

A Yes.

Q Was merchandise of that value returned?

A I don't remember.

Q You don't remember?

A No.

Q Who actually made up that credit memo?

A The office.

Q Did you make them up yourself?

A No.

Q Did you give directions that they be made up?

A No.

Q How did they come to be made up?

A They were either credits that were on the books that had to be taken off at that time, or the merchandise was returned.

Q Do you remember testifying -- Withdraw that.

Is it your testimony now that you have no specific recollection now as to whether you gave instructions for these credit memos to be made up?

A I gave instructions for some of them to be made up. I don't know exactly which applies to what, though.

Q Which ones did you give instructions to make up?

A Well, anything that was outstanding that weren't actually bills.

Q In other words, you gave instructions to make up credit memos for any of the receivables on the books which didn't represent goods actually shipped?

A Yes.

Q Well, was this one of the memos for which you gave instructions?

THE REFEREE: That applies to Midwood; is that right?

A Yes. I'm confused because these credit memos are on the customer's stationery.

Q As a matter of fact, didn't you have some of those made up on the customer's stationery so that it would give the appearance of being legitimate?

A I don't recall.

Q I'm reading from the transcript of July 11, 1967, page 19, line 11:

"Question: Tell us why $27,000 worth of AC merchandise was returned by Midwood and entered on the books June 20, 1967.

"Answer: Because they would wipe off invoices that appeared in November and December 1966 from pre-invoicing of merchandise that was not shipped."

Now, does that refresh your recollection as to how that particular credit memo came to be created?

A Well, according to that it says AC material was returned, right?

Q That's what it says, right.

A Well, this is not AC material. This happens to be Autolite material.

Q Going back to page 24 of that transcript:

"Question: So that it really did not make any difference what kind of merchandise was entered on these credits, did it?

"Answer. That is right.

"Question: You referred originally to AC merchandise returned; is that right?

"Answer: It was AC merchandise that was billed.

"Question: And yet when you gave the credit return the major item was 25 shock absorbers of Autolite. Is it true Autolite is not made by AC?

"Answer: That is right."

Then skipping to line 10:

"Question: How come you put a credit for Autolite when you billed AC?

"Answer: Because AC charges us back 10% for credit."

Does that refresh your recollection as to why the purported return invoice is for Autolite rather than for AC merchandise?

A Yes.

Q And were you asked these questions and did you give these answers on these days?

A Yes.

MR. STERN: I would like that marked.

THE REFEREE: Do you have any objection to it?

MR. BERMAN: No, sir.

THE REFEREE: That will be 27 in evidence.

(Credit memo marked Trustee's Exhibit 27 in evidence, of this date.)

Q Now, I have another credit memo to A&D Auto dated June 20, 1967, again a copy of a credit memo, and I ask you to examine this.

A Yes.

MR. BERMAN: Who was that to?

MR. STERN: A&D.

Q Is that another credit memo issued to Wyckoff-- to -- withdraw that.

Is that another credit memo issued to cancel out one of the Wyckoff invoices of November and December 1966?

A It appears to be.

Q Does that credit memo represent goods that were actually returned?

A I don't remember.

MR. STERN: In the interest of expediting matters, I am going to show you one, two -- I'll read them off.

Q I am going to show you Credit memo to H. Smith dated June 20, 1967 in the amount of $26,676.10, and credit memo to Republic Battery dated June 20, 1967 in the amount of $18,215.91, and credit memo to Craft, in the

amount of -- dated June 20, 1967, in the amount of $5,368.24.

A credit memo to Universal Bernal which is dated June 20, 1967, in the amount of $2,152.56.

A credit memo to Jade dated June 20, 1967 in the amount of -- I guess it's $5,019.

I ask you to examine all of these and tell me whether these represent credit memos which were issued on that date to cancel out receivables representing goods which were not shipped.

A They appear to be the same invoices with the exception of Universal Bernal, which was not an AC jobber, so I can't see how he can have invoices that weren't --

Q But these are copies of credit memo which were prepared by John Licht, Inc. and entered on the books of John Licht?

A That's right.

MR. STERN: I would like these marked in seriatim.

Would you like to examine them?

MR. SHEINY: Well, I'll object to the invoice of Universal Bernal, because the issue here is these are entries of returns which were not actually received, and Universal Bernal he has testified was

not in that category.

THE REFEREE: Well, I don't know whether Mr. Stern has any prior testimony --

MR. STERN: On Universal Bernal? These were all included in the prior testimony.

THE REFEREE: All right. I'll allow it and permit you to connect it. If you don't, I'll strike it.

MR. STERN: All right. If I have seven out of eight, that won't be too bad.

These have previously been marked as Trustee's exhibits of July 11, 1967, in the following order:

One to A&D will be Trustee's Exhibit 28.

H. Smith will be 29.

Republic Battery will be 30.

Craft will 31.

Universal Bernal I'll mark 32 for identification so we don't forget about it, and admit it in error.

And Jade will be Trustee's Exhibit 33.

THE REFEREE: All right, so you'll mark 32 for identification.

(Credit memos so marked by the reporter.)

Q With the credit memo to Republic Battery we have what appear to be -- attached, what appear to be bills of lading. Do these bills of lading represent goods that were actually returned?

A I don't recall. That's the way Republic Battery would ship the merchandise to us.

Q Well, do you remember specifically about this credit memo and this bill of lading?

A No.

Q Reading from your testimony of July 11, 1967, page 41, line 3:

"Question: This group differs from the prior exhibit a little bit in that it has copies of bills lading attached; is that right?

"Answer: This is the customer's manner of handling credit.

"Question: I do not understand. Here is a non-existent shipment of goods which is coming back, and it is non-existent and you have bills of lading attached.

"Answer: This is the way he would return merchandise, so I requested invoices and credit slips from him in the way he would do it.

"Question: What you are saying is that the

bills of lading or little pieces of paper attached and were prepared by Republic Battery; is that what you are saying?

"Answer: Yes.

"Question: Not prepared by your office?

"Answer: The credits were prepared by my office; the bills of lading may have been. I don't know who prepared them.

"Question: You notice there is no signature on these bills of lading showing the goods were ever received.

"Answer: They were not received because they were not billed to start with."

Do you remember being asked those questions and giving those answers?

A I must have if that's in the testimony.

Q Does that refresh your recollection as to the nature of these purported bills of lading attached to this Republic credit memo?

A Yes.

Q And, in fact, these were attached just to make it appear that this was a valid credit memo representing goods which were actually returned, isn't it?

A Yes.

Q In fact, the goods were not returned?
A According to my testimony they weren't.
Q So you accept your testimony as it was then?
A Yes.

MR. STERN: Off the record.

(Discussion off the record.)

Q What was the status of John Licht, Inc. on June 20, 1967?
A We were in Chapter XI.
Q Already in a Chapter XI proceeding?
A Yes.
Q And when did John Licht, Inc. go out of business, or when was it adjudicated?
A July 11th.
Q Now, up to June 20, 1967, had you been having-- Withdraw that.

So on the date these credit memos were issued John Licht, Inc. was already in a bankruptcy proceeding, wasn't it?

MR. BERMAN: Your Honor, I object to that. His answer, "It was in a Chapter XI proceeding," I don't know whether the witness is competent to testify they were in a bankruptcy proceeding. I think it is self-evident the answer is what

he gave. I object on the ground it has already been answered.

MR. STERN: It's a state of mind.

THE REFEREE: You've just made the statement, Mr. Berman, I don't know whether it's an objection or not, but if it's an objection, I'm going to overrule it.

MR. BERMAN: O.K.

THE REFEREE: Off the record.

(Discussion off the record.)

Q What was the reason why all of these credits were issued on June 20, 1967?

A The only thing I can possibly think of is that I felt that everything was over anyhow, and I didn't want these customers to have problems which weren't their doing.

Q When you say you felt that everything was over, do you mean that you anticipated that this Chapter XI proceeding would not be successful and that John Licht, Inc. would eventually be adjudicated bankrupt?

A No, I had no knowledge of what the actual --

Q What do you mean by you felt everything was over anyway?

A Well, they gave us an operating manager to come in and was with us.

THE REFEREE: You mean "they," the creditors?

THE WITNESS: The creditors.

THE REFEREE: Committee?

THE WITNESS: Right.

A And I don't recall exactly what preceded this, for me to take the credits off the books.

Q But you wanted to take the credits off the books while you still had some position or control over the affairs of the company; is that right?

A I really don't know what motivated me to do it except my customers shouldn't have a problem.

Q What kind of problem could they have?

A Well, the problem they would have would be that, maybe the factor or the creditors would look to them to pay these invoices, that weren't actually -- the merchandise hadn't been received.

Q In the ordinary course of events, you expected the factor to collect the accounts you had assigned, didn't you?

A Well, I expected the factor to collect the accounts, but they would have been collected if I billed it to somebody else, and the money would have been sent to the factor to cover these invoices.

Q Well, you assigned invoices.

A We did not assign invoices.

Q You assigned a lump -- You assigned all of your receivables?

A A lump sum.

Q Right. And these receivables consisted of individual receivables, the lump consisted of the parts, right?

A Right.

Q All right. So you anticipated that in the ordinary course of events the factor would proceed to collect each receivable which comprised the lump sum of the receivables which he had accepted; is that right?

A That's right.

Q And you also anticipated, didn't you, that if the factor attempted to collect these receivables, that these people would resist on the ground that they hadn't received the merchandise; isn't that true?

A I imagine they would.

Q So your issuing these credit memos was as much to protect yourself as to protect the customer; wasn't it?

A It had nothing to do with protecting me. The best thing in the world I could have done was not to do anything,

right? That way I would have been protected fully, and let my customers worry about it.

Q At the time that you assigned these receivables to Transamerica, you knew that insofar as the receivables represented by these credit memos are concerned, that they were not valid; isn't that true?

A Yes.

Q And you knew that if any attempt was made to collect them that the customers would resist by claiming they had never received the goods; is that right?

A Yes.

Q And that, in effect, this would have constituted on your part obtaining money for John Licht, Inc. under false and fraudulent circumstances?

MR. BERMAN: I object to it on the ground he is asking for a conclusions of law. The witness is not competent to answer.

THE REFEREE: I will allow it.

A No.

Q In other words, you got $120,000 for John Licht, Inc. from Transamerica based on accounts which you knew were not valid, that did not have that value; isn't that correct?

A No, it's not correct. First of all, I didn't get

$126,000, I got a percentage of the invoices. Second of all, they had enough security for the money that they did give me at the time. They had my accounts receivable, they had an inventory, and they had three pieces of property, which is far in excess, at the time, than what they gave me. So there was no jeopardy on their part.

Q You mean, there was no way that they could get hurt?

A At that time there was no way that they can get hurt.

THE REFEREE: I think you testified that you got $400,000 from Transamerica.

THE WITNESS: Yes.

MR. STERN: I believe it was approximately $460,000.

THE WITNESS: No.

Q What was the total amount of the receivables and inventory which was assigned to Transamerica at the time the factoring agreement was made and the $400,000 was obtained?

A I have no idea.

Q You have no idea?

A I don't remember.

Q But you testified now that it was approximately twice the amount of the money you received.

THE REFEREE: No, he didn't say that; he said there was ample security.

My recollection is that that was his testimony.

Q Was the value of the inventory and the good receivables that you assigned to Transamerica equal to the amount of money that you got?

A If I recall at the time the good receivables alone was enough without the inventory.

Q So your testimony now is that at the time you made this assignment that the amount of valid receivables exceeded $400,000?

A Yes.

Q Well, if the amount of valid receivables exceeded $400,000, what was the purpose in assigning these invalid receivables?

A I didn't assign individual receivables; they took the whole account with non-notification, in bulk.

They didn't itemize accounts, they took the whole receivables in bulk. There wasn't an agreement where I could hold back some. I had to give them everything or nothing. It wasn't where I picked out what I wanted to give them. This was the agreement.

Q Yes, but couldn't you have said to them, "Well, don't take these because these invoices or these

receivables are not valid?

A I don't know if I could or not, but I didn't.

Q But you knew that those non-valid receivables were in that group?

A Yes.

Q And you didn't tell Transamerica anything about that?

A No.

Q So they had no way of calculating whether the amount of receivables would actually cover the amount of money they were giving to you?

A No.

Q They had to rely on your good faith?

A They relied on the invoices I gave them, plus the inventory, plus the buildings.

Q So they relied, when they gave you the money, they relied on the fact or the representation that all of those receivables were valid, to the best of your knowledge?

MR. BERMAN: Your Honor, I object to that on the ground I raised before, that that's not an issue in this case at all.

THE REFEREE: I will allow it.

I don't believe you've gotten an answer to that, have you?

(Question read)

A I don't know what they relied on. I don't know if they relied on the inventory, the buildings -- I don't know what they did.

Q Well, to your knowledge, did they know that $120,000 of the receivables they were accepting were not valid?

A I answered that. I don't think they knew. How would they know?

TRIAL TRANSCRIPT OF AUGUST 9, 1972

Pages 62(line 13) - 64 (line 23)

Q Mr. Licht, the practice that your company engaged in with respect to AC Products, how long had that been going on?

A We were distributors of AC for about forty years, so I would say about forty years.

Q And in order to clarify the situation, exactly what was the practice that you testified to before?

A Well, AC would authorize accounts which they would want you to sell to.

Q These are AC products?

A Ac products.

Q Are they spark plugs?

A They're spark plugs, oil filters, fuel pumps -- all

various items that they manufacture. And there could be two jobbers on a block and one jobber they wanted and one jobber they wouldn't, so they'd tell you you couldn't sell the other jobber.

Q Did they give you a list of these people?

A No, you submitted to them, and they either approved them or disapproved them, and, which, in our way of thinking was a restraint of trade.

We had a letter from them one time stating that we're not allowed to sell -- we can sell anybody we want, and they cannot tell us who to sell. This was in a letter from them. And the day we got the letter, a couple of days later we got a follow-up from the New York sales manager, who said, "You received a letter. We legally sent you the letter, but don't believe it. You sell who we tell you to sell."

Q This was in writing?

A This was in writing at the time. So when we sell an authorized account we would receive a compensation of 10% on the goods we sold them.

THE REFEREE: You mean a discount?

THE WITNESS: Yes. Well, they call it a compensation, because we would be billed at a jobber price, and we would get 10% off the invoice for

warehousing, and the other 10% was for reported sales to wholesale accounts.

Q Did they give you this after you reported the sales?

A After we reported the sales.

THE REFEREE: So you would then get 20%?

THE WITNESS: Right.

THE REFEREE: Ten for warehousing and ten for selling an authorized account.

THE WITNESS: Yes.

Q If you didn't sell an authorized account --

A Then we only received the ten.

So it was the practice of the industry, everybody sold anybody they wanted to and covered up who they were selling, and as a result this AC, General Motors, and a lot of the big corporations had teams of auditors, which are on a 12-month schedule going around to see if they can catch their customers in this practice, and if they would open up their books to you you would see where almost every account they had was caught and charged back and another year goes by and they are caught again. It's -- unfortunately, it sounds horrible, but this is the way this business is run

TRIAL TRANSCRIPT OF AUGUST 9, 1972

Pages 98 (line 16) - 99 (line 9)

Q I show you Trustee's Exhibit 24 and isn't this a guarantee to Westinghouse Electric of the accounts, of the obligations of John Licht, Inc., executed by your mother and father in August of 1966?

A Yes.

Q Now, in 1967, when they executed a further guarantee, you already owed Westinghouse about -- when I say "you" I mean John Licht, Inc. -- already owed Westinghouse about $120,000, didn't it?

A Yes.

Q Which couldn't be paid? Which you didn't have money to pay?

A Yes.

Q Also, on March 1st, you assigned all the inventory and all of the accounts receivable and all the equity in the real estate to Transamerica as security for the $400,000, isn't that also true?

A Right.

TRIAL TRANSCRIPT OF AUGUST 18, 1972

Page 51

Q And the reason you did all this, Mr. Licht, was because you knew that this business was going under, and you were taking these desperate chances and making these bad decisions to avoid what was going to be a very unpleasant and painful experience for you and your family, weren't you?

A No, you are so wrong it is sickening.

Q Well, you signed away your home, your parents signed away their home. You did things which exposed you to all types of liabilities.

A Everything I did I did with the anticipation that it would pull us through and we would be able to remain in business, not out of desperation where I put my head in the sand and felt that we couldn't go on.

Q That it would pull you through. Pull you through from what?

A From the position we were in.

Q From the financial crisis you were in, isn't that so?

A Well, you want to -- you need to put this in testimony that we were in financial crisis?

Q Well, wasn't it a financial crisis?

A Of course it was. What did I go to factors for?

INTERROGATORY NO. 11 AND TRUSTEE'S ANSWER TO INTERROGATORY NO. 11

11. What were the dates of the entries alleged to have been made in the books of John Licht, Inc., representing returns of merchandise to it, none of which was actually received by it, setting forth the merchandise alleged to have been returned and the value thereof.

A. 11. The alleged false returns referred to are covered by credit memos dated June 20, 1967, for the accounts of Essex Warehouse Distributors, A & D Auto, Midwood Automotive Distributors, H. Smith Company, Republic Battery Company, Craft, Universal Bernal, and Jade. Invoices which proport to represent merchandise returned are attached to each of these credit memos. All of the foregoing were marked as Trustee's Exhibits 1 through 8 for identification of July 11, 1967 and will be made available to the attorney for Melvin Licht upon his request for his inspection.

Interrogatory No. 11 and

Trustee's Answer to Interrogatory No. 11.

TRUSTEE'S EXHIBITS

EXHIBIT 2 - INVOICE DATED JUNE 30, 1966

A Subsidiary of LOUIS A. SCHAFFER, Inc.

CLEVELAND, OHIO 44103
PHONE 881-3000

SOLD TO
Thermoid Division
H.K. Porter Co., Inc.
1250 Porter Building
Pittsburgh, Pa. 15230
Attn: Mr. J.H. Kearns

SHIP TO
Mr. Mel Licht
44 Bayberry Road
Lawrence, L. I., New York

A224

SHIP VIA	CUSTOMER'S ORDER NO.	NUMBER	INVOICE DATE
6/8/66 INTERSTATE		37034	6/30/66
PACKED BY	CHECKED BY	TERMS NET, 10 DAYS	

QUAN.	✓	PRIZE NO.	MODEL NO. & DESCRIPTION	PRICE	AMOUNT
1			Special 3-pc. Sofa 10'x11'		
			Fabric		
2			2885 Chairs On Swivels		
			4767 blue		
			(4767 Coupons) ✓		3332.00
			Frt.		38.00
					3370.00
					OK
					JKS

"Seller represents that with respect to the production of the articles and/or the performance of the services covered by this invoice, it has fully complied with Sections 6, 7 and 12 of the Fair Labor Standards Act of 1938, as amended, and of regulations and orders of the United States Department of Labor issued under Section 14 thereof."

ORIGINAL INVOICE

T Reardon Exhibit 2

DATE 6/9/72

RONALD E. TOLKIN

GD for Eden

7/11/67

EXHIBIT 4 - INVOICE DATED MAY 23, 1966

A Subsidiary of LOUIS L. SCHAFFER, Inc.

CLEVELAND, OHIO
PHONE 881-3000

A225

SOLD TO
Thermoid Division
H. K. Porter Co.

SHIP TO
Mr. Mel Licht
44 Bayberry Avenue
Lawrence, New York

SHIP VIA	CUSTOMER'S ORDER NO.	NUMBER	INVOICE DATE
4-18-66		38738 - Thermoid	5-23-66
PACKED BY	CHECKED BY	TERMS	
	9999	NET, 10 DAYS	

QUAN.	√	PRIZE NO.	MODEL NO. & DESCRIPTION	PRICE	AMOUNT
1			Carpeting for Mr. Mel Licht Per Instructions.		750.00
			1073		
			(1073)		
			1073 blue		
			CONFIRMING ONLY		

"Seller represents that with respect to the production of the articles and/or the performance of the services covered by this invoice, it has fully complied with Sections 6, 7 and 12 of the Fair Labor Standards Act of 1938, as amended, and of regulations and orders of the United States Department of Labor issued under Section 14 thereof."

ORIGINAL INVOICE

T Reardon 4

DATE 6/9/72

RONALD E. TOLICH

9F For Dlw

7/11/67

EXHIBIT 5 - INVOICE DATED JANUARY 25, 1967

A Subsidiary of CARL L. SCHAFFER, Inc.

CLEVELAND, OHIO 44103
PHONE 881-3000

SOLD TO: Thermoid Division

SHIP TO: Mr. Hal Licht
44 Bayberry Rd.
Lawrence, New York

A226

SHIP VIA	CUSTOMER'S ORDER NO.	NUMBER	INVOICE DATE
1/16/67		45470 - Thermoid	
PACKED BY	**CHECKED BY**	**TERMS**	
	9999	NET, 10 DAYS	1/25/67

PRIZE NO.	QUAN.	√	MODEL NO. & DESCRIPTION	PRICE	AMOUNT
			(3180)		
	one		Bedroom Set		2223.44
	one		Corner Table		
	Six		Shutters & Frames		
			FREIGHT TO FOLLOW!		
			-3180		
			364 yds 364 yds = 3180 Lawrence		

*Seller represents that with respect to the production of the articles and/or the performance of the services covered by this invoice, it has fully complied with Sections 6, 7 and 12 of the Fair Labor Standards Act of 1938, as amended, and of regulations and orders of the United States Department of Labor issued under Section 14 thereof."

ORIGINAL INVOICE

I Pass 00 EXHIBIT 5
DATE 6/9/72
[illegible]

9 B Fn Dlm
7/11/67

EXHIBIT 18 - PURCHASE ORDER NO. 1669

PURCHASE ORDER

40062 A227

L No 1669

JOHN LICHT

793730

8696-13th AVENUE, BROOKLYN 14, N.Y.

DE 1-2000

Attn Betty Marsh INC

SPECIAL NOTE

1 – All car load deliveries trucker must notify a day before delivery.
2 – All shipments must be sent PRE-PAID when order qualifies.
3 – Purchase order numbers must appear on packing slips.

Attention: Att. Skipper

	TERMS:	VIA:

QTY	PART NUMBER	QUANTITY	PART NUMBER	QUANTITY	PART NUMBER
2	Dual Turntable with base #10-19			20730	441446
2	Empire 888 PE			20733	9614
1	440 T Fisher Stereo Multiplex			20808	359310
			SPECIAL ITEM ORDERED		129814 ✓
					116000
					109814
	Mine 2-car load				+186
	POP 110000				

John Licht
By Phil Sachs
Authorized Signature

ONLY COPY AVAILABLE

EXHIBIT 20 - PURCHASE ORDER NO. K5202

PURCHASING DEP COPY

MARITZ INC.

DATE RECD.	INVOICE NUMBER	INVOICE DATE
DATE SHIPPED	**TRANS. INV. OR EXP.**	**DATE BILLED**

Order No. 907347

A228

Customer Purchase Order No.

Customer Name and Address

AC Sparkplug

Account No. ~~40070~~ 4004-0

ORDER NO. K 5202

DATE March 20, 1967

SHIP TO: MARITZ INC.
DISTRIBUTION CENTER
1301 NORTH HIGHWAY DR.
FENTON, MO. 63026
UNLESS OTHERWISE INDICATED BELOW

BOUGHT OF:

General Electric Company
1355 Warson Road North
St. Louis, Missouri 63132
Attn: Jim Vincent

Mr. Mal Licht
44 Bayberry Road
Lawrence, New York

TERMS:

SHIP VIA:

77-79 VENDOR NO. 943

QUANTITY	MFG. NO.	DESCRIPTION, COLOR, FINISH, SIZE, ETC. 17-44	ITEM NO. 56-58
1	JK29	General Electric Built-In Oven - Coppertone	0001

KEY PUNCHED APR 6 1967 OPR. 25

SHIP DIRECT & PREPAID

NATIONAL BANK
POINT VERIFICATION STICKER

Order Number 914548
Account Number 4004D
Points Received 6400
Signed MB

DATED 11 for cl

HOW SHIPPED	CHARGES	NO. CTNS.	WEIGHT	PRO. OR W. B. NO.	RECEIVED BY	MARITZ INC.
						JoAnn Martin

ONLY COPY AVAILABLE

EXHIBIT 22 - PURCHASE ORDER NO. 1291

PURCHASE ORDER

P. O. No. 1291

A229

JOHN LIGHT

3000-10th Avenue, Hasbrouck Heights, N.J.

DE 1-2000

SPECIAL NOTE:

1 – All car load deliveries trucker must notify a day before delivery.
2 – All shipments must be sent PRE-PAID when order qualifies.
3 – Purchase order numbers must appear on packing slips.

Attention: Special Orders

DATE: 4/20/67 | TERMS: | VIA:

QUANTITY	PART NUMBER	QUANTITY	PART NUMBER	QUANTITY	PART NUMBER
1	Model TFM-300 Fisher Amplifier SPECIAL ITEM ORDERED 4/20/67				55000 25013a 48870 #275097

Ship to: Mel Light
44 Bergenline Rd
Lawrence NJ
12 in 2

$1,000 paid Enclosed
50 130
4.870 Refund

Send to John Light

Wurtec's 10/18/67

55000

Cl 15-34 Cr 30-65

John Light
By Mel Light
Authorized Signature

ONLY COPY AVAILABLE

EXHIBIT 23 - PURCHASE ORDER NO. 1304

JOHN LIGHT

8606-13th AVENUE, BROOKLYN 14, N.Y.
DE 1-2000

PURCHASE ORDER
S730024 A230
L No. 1304

Trucker

DATED 10/14/67

FRANCES S. KARR

SPECIAL NOTE

1 – All car load deliveries trucker must notify a day before delivery.
2 – All shipments must be sent PRE-PAID when order qualifies.
3 – Purchase order numbers must appear on packing slips.

TERMS:

VIA:

QTY	PART NUMBER	QUANTITY	PART NUMBER	QUANTITY	PART NUMBER
	SPECIAL ITEM ORDERED		Ship to: Mel Light 41-09 Bayberry Lane Lawrence, New York		
		Return	due	TWP	

John Light

By

Authorized Signature

ONLY COPY AVAILABLE

JOHN LICHT, INC.

REPORT ON EXAMINATION OF THE BOOKS AND RECORDS

AS OF APRIL 25, 1967

Trustee EXHIBIT 25
DATE 6/16/72
RONALD E. TOLKIN

Trustee EXHIBIT 1
DATED 8/1/67
FRANCES S. KARR

LEON I. RADIN & CO.
CERTIFIED PUBLIC ACCOUNTANTS

LEON I. RADIN & CO.
CERTIFIED PUBLIC ACCOUNTANTS

BRYANT 9-9046

LEON I. RADIN, C.P.A.
SIDNEY C. LAUTT, C.P.A.

101 WEST 31ST STREET, NEW YORK 1, N.Y.

Exhibit 25 - CPA Report

A232

May 3, 1967

John Licht, Inc.
Brooklyn, New York

Gentlemen:

Pursuant to retention by you, we have prepared the following for presentation at a meeting of your creditors:

EXHIBIT "A" - Balance Sheet - Per Books and Records - As of April 25, 1967

EXHIBIT "B" - Statements of Profit and Loss - For the Calendar Year 1966 and for the Period from January 1, 1967 to April 25, 1967

Schedule #1- Sundry Expenses

EXHIBIT "C" - Reconciliation of Capital Deficiency - As of April 25, 1967

Since we have not verified any of the assets or liabilities, no opinion is expressed. As you know, this is our initial engagement by you and the preparation of these statements was made for the purpose of presenting them in time to accommodate a scheduled meeting of your creditors.

Respectfully submitted,

Leon I. Radin & Co.

Certified Public Accountants

JOHN LICH
BALANCE SHEET - PER
AS OF APRIL

Exhibit 25 - CPA Report

A233

A S S E T S

Cash in Banks		$ 36,296.36
Accounts Receivable	$426,481.85	
Less: Loans Payable - Transamerica Financial Corp.	243,458.02	183,023.83
Post Dated Checks Receivable		10,311.00
Merchandise Inventory - As Submitted	527,718.34	
Less: Loans Payable - Transamerica Financial Corp.	198,867.00	328,851.34
Notes Receivable	37,202.15	
Less: Notes Receivable Discounted	13,202.15	24,000.00
Loans and Exchanges Receivable		13,485.19
Machinery and Equipment	2,837.61	
Less: Reserve for Depreciation	652.84	2,184.77
Office Fixtures	13,209.12	
Less: Reserve for Depreciation	7,377.78	5,831.34
Building Improvements	25,468.54	
Less: Reserve for Depreciation	8,055.48	17,413.06
Unexpired Insurance		4,155.86
Balances Due from Suppliers		39,544.83
Sundry Assets		1,250.00
Total Assets		666,347.58
Capital Deficiency - April 25, 1967 - Per Exhibit "C"		862,512.51
TOTAL ASSETS AND CAPITAL DEFICIENCY		$1,528,860.09

Subject to comments annexed

Exhibit 25 - CPA Report

L I A B I L I T I E S			
Taxes Payable		$ 11,514.89	
Accrued Wages		2,235.00	
Accrued Vacation and Sick Pay		4,584.25	
Salesmen's Commissions Payable		484.34	
Union Pension and Insurance Payable		932.00	
Accounts Payable		412,585.32	$ 19,750.48
Notes Payable - Trade		607,634.35	
Loan Payable - Franklin National Bank		150,000.00	
- Franklin National Bank	$50,000.00		
Less: Cash in Bank - Collateral Account	50,000.00	-0-	
Loans and Exchanges Payable		70,000.00	
Loans Payable - Kingsway Savings Bank		8,717.62	
			1,248,937.29
Loans Payable - Officer			260,172.32
TOTAL LIABILITIES			$1,528,860.09

JOEY LICH
STATEMENTS OF F

Exhibit 25 - CPA Report

A235

	FROM
Sales	
Less: Sales Returns and Allowances	
Sales Discounts	
Net Sales	
Cost of Goods Sold	
Merchandise Inventory - Beginning of Period	
Merchandise Purchases	$442,534.
Less: Purchase Discounts	4,061.
Net Purchases	
Total Cost of Goods Available for Sale	
Less: Merchandise Inventory - End of Period	
Cost of Goods Sold	
Gross Profit or Loss	
Expenses	
Salaries:	
Officers	
Wholesale Department	8,300.(
Mechanics	30,261.:
Supervision	-0-
Office	9,309.8
Salesmen	9,397.(
Delivery	14,258.:
Total Salaries	5,134.9
Vacation and Sick Pay	
Truck Rental	
Interest and Bank Charges	
Factors' Charges	
Rent	
Taxes	
Freight and Express	
Insurance	
Union Welfare and Pension	
Telephone	
Light and Power	
Stationery, Printing and Postage	
Repairs and Machinery Rental	
Towels, Uniforms and Cleaning	
Legal and Accounting	
Travel and Entertaining	
Sundry Expense Accounts - Schedule #1	
Association Dues and Permits	
Detective Service and Burglar Alarm	
TOTAL EXPENSES	
NET PROFIT OR LOSS	

EXHIBIT 'F

IN LIGHT, INC.
S OF PROFIT AND LOSS

Exhibit 25 - CPA Report

A236

FROM JANUARY 1, 1967 TO APRIL 25, 1967			CALENDAR YEAR 1966	
		$454,310.02		$3,453,995.03
	$ 146,839.38		$ 267,773.14	
	2,203.90	149,043.28	8,903.30	276,676.41
		305,266.74		3,177,321.59
	901,155.20		798,516.15	
2,534.76			$2,842,147.37	
4,061.57			18,020.99	
	438,473.19		2,824,126.38	
	1,339,628.39		3,622,642.53	
	527,718.34		901,155.20	
		811,910.05		2,721,487.33
		(506,643.31)		455,834.26
8,300.00			26,000.00	
0,261.11			86,356.29	
-0-			8,015.18	
9,009.86			25,473.06	
9,897.03			33,037.58	
4,558.19			43,135.13	
5,134.90			23,088.38	
	77,161.09		245,105.62	
	4,584.25		-0-	
	9,926.74		22,818.65	
	13,178.57		60,440.16	
	10,318.96		-0-	
	8,020.00		24,755.35	
	5,955.98		12,609.81	
	2,980.13		4,589.03	
	4,159.75		12,417.62	
	3,540.65		9,955.75	
	2,466.54		6,465.44	
	2,282.99		5,674.27	
	2,762.36		5,012.27	
	1,727.71		4,092.15	
	657.10		1,701.98	
	11,374.00		1,981.85	
	134.72		1,917.07	
	4,514.51		6,474.62	
	936.40		2,834.40	
	1,322.00		3,375.27	
		168,004.45		432,221.31
		($674,647.76)		$ 23,612.95

EXHIBIT "B"
SCHEDULE #1

Exhibit 25 - CPA Report

JOHN LICHT, INC.
SUNDRY EXPENSES

A237

	Calendar Year 1966	January 1, 1967 To April 25, 1967
Advertising	$ 514.05	$ 50.75
Packing and Shipping Supplies	157.44	226.11
Depreciation	2,195.53	
Bad Debts	3,584.10	
General	23.50	1,102.65
Donations		595.00
Adjustments		2,500.00
TOTALS	$ 6,474.62	$ 4,514.51

Exhibit 25 - CPA Report

EXHIBIT "C"

A238

JOHN LICHT, INC.
RECONCILIATION OF CAPITAL DEFICIENCY
AS OF APRIL 25, 1967

Capital Stock	$ 25,000.00	
Paid in Surplus - December 31, 1966	186,608.78	
Earned Surplus - December 31, 1966	28,018.99	
		$ 239,627.77
Less: 1966 Federal Income Tax Paid	929.35	
Adjustments	426,563.17	
Net Loss for the Period - January 1, 1967 to April 25, 1967 - Per Exhibit "B"	674,647.76	
		1,102,140.28
CAPITAL DEFICIENCY - APRIL 25, 1967		$ 862,512.51

EXHIBIT 26. - FIRST PAGE OF CREDIT MEMO NO. 6042

DEwey 1-2000

JOHN LICHT

Wholesale Automotive Distributors

8505 - 19th Avenue, Brooklyn 14, N. Y.

A239

No. 6042

SOLD TO: ESSEX

SHIP TO:

CREDIT MEMO

CUSTOMER'S ORDER NUMBER	TERMS	INVOICE DATE
		6-20-67

QUANTITY	PART NUMBER	DESCRIPTION	UNIT PRICE	EXTENSION	AMOUNT
		Credit per attached			21000

Trustee

Creditor

Agent

1 For Other

7/11/67

TRANSFER 26

DATE 2/19/72

FORM 3 CT-1 (REV)

EXHIBIT 27 - FIRST PAGE OF CREDIT MEMO NO. 6044

DEwey 1-2000

JOHN ILICHIT

Wholesale Automotive Distributors

8803 - 16th Avenue, Brooklyn 14, N. Y.

Cadillac

A240

No. 6044

Midwood

SHIP TO

CREDIT MEMO

CUSTOMER'S ORDER NUMBER	TERMS	INVOICE DATE
		6-20-67

QUANTITY	PART NUMBER	DESCRIPTION	UNIT PRICE	EXTENSION	AMOUNT
		Mount Co			
		per att			27.50
		Trunk EXHIBIT	2		
		DATED 7/11/67	Bx Stand		

27

DATE 5/9/72

RONALD E. TOLKIN

OFFICE

EXHIBIT 28 - FIRST PAGE OF CREDIT MEMO NO. 6040

DEwey 1-2000

JOHN ILLICHT

Wholesale Automotive Distributors

8696 - 18th Avenue, Brooklyn 14, N. Y.

A241

No. 6040

A-D Auto

SHIP TO

CREDIT MEMO

CUSTOMER'S ORDER NUMBER	TERMS	INVOICE DATE
		6-26-67

QUANTITY	PART NUMBER	DESCRIPTION	UNIT PRICE	EXTENSION	AMOUNT
		Order as per attached			
				142	386

Prudie

7/11/67

DATED 7/11/67

FRANCES S. KARR

3 Ft Flex

RONALD E. TOLIN

EXHIBIT 29 - FIRST PAGE OF CREDIT MEMO NO. 6046

DFwoy 1-2000

JOHN LUCHT

Wholesale Automotive Distributors

8696 - 18th Avenue, Brooklyn 14, N. Y.

Cadillac

A242

No 6046

SOLD TO H. Smith

SHIP TO CREDIT MEMO

CUSTOMER'S ORDER NUMBER	TERMS	INVOICE DATE
		6-26-67

QUANTITY	PART NUMBER	DESCRIPTION	UNIT PRICE	EXTENSION	AMOUNT
		Claim #			
		Attached			
				2676.10	

Credit 4 Fr Ckt

DATED 7/11/67

Printed

DATE 8/9/72

DONALD E. TOLSON

EXHIBIT 30 - FIRST PAGE OF CREDIT MEMO NO. 6045

DEwey 1-2000

JOHN LICHT

Wholesale Automotive Distributors

8695 - 10th Avenue, Brooklyn 14, N. Y.

Cadillac

A243

No. 6045

Republic Batteries

SHIP TO

CREDIT Memo

CUSTOMER'S ORDER NUMBER	TERMS	INVOICE DATE
		6-20-62

QUANTITY	PART NUMBER	DESCRIPTION	UNIT PRICE	EXTENSION	AMOUNT
		Add'd on per attached			
					10.21
		Thanks			Ab Dalek
			7/11/62		

Transfer 3C

8/17/62

OFFICE

EXHIBIT 31 - FIRST PAGE OF CREDIT MEMO NO. 6041

DEwey 1-2000

JOHN FLIGHT

Wholesale Automotive Distributors

8696 - 19th Avenue, Brooklyn 14, N. Y.

A 244

No. 6041

Craft

SHIP TO

CREDIT MEMO

CUSTOMER'S ORDER NUMBER	TERMS	INVOICE DATE
		6-20-67

QUANTITY	PART NUMBER	DESCRIPTION	UNIT PRICE	EXTENSION	AMOUNT
		Credit for			
		Returned			
		7/11/67			

BANKRUPT'S EXHIBITS

EXHIBIT A - INCOME TAX AUDIT CHANGES

FORM 4549
(REV. JUNE 1970)

DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE

INCOME TAX AUDIT CHANGES

NAME AND ADDRESS OF TAXPAYERS	S.S. OR E.I. NUMBER	FILING STATUS
[illegible] Eppie Zeckt 55 Locust Ave [illegible] Nutley NJ 1057	076-44-8446	M
PERSON WITH WHOM AUDIT CHANGES WERE DISCUSSED	NAME AND TITLE M. Slater	A 245

1. ADJUSTMENTS TO INCOME	YEAR: 1966	YEAR: 1967	YEAR:
A. [illegible]	8605.94	7845 -	
B. Tax Refund	277.12	2[illegible]75	
C.			
D.			
E.			
F.			
G.			
2. TOTAL ADJUSTMENTS	$882.94	$ 059.75	
3. ADJUSTED GROSS OR TAXABLE INCOME SHOWN ON RETURN OR AS PREVIOUSLY ADJUSTED	17 9[illegible]84	14 0[illegible]	
4. CORRECTED ADJUSTED GROSS OR TAXABLE INCOME	17883.71	13 01[illegible]75	
5. TAX	4950.58	3345.71	
6. ALTERNATIVE TAX IF APPLICABLE (From Page ____)	-		
7. TAX SURCHARGE	-		
8. CORRECTED TAX LIABILITY (Lesser of line 5 and 6 plus line 7)	4950.58	3345.71	
9. LESS CREDITS (Specify) A.			
B.			
C.			
10. BALANCE (Line 8 less amounts on lines 9A through 9C)	4950 88	3345 71	
11. PLUS: A. TAX FROM RECOMPUTING PRIOR YEAR INVESTMENT CREDIT			
B. SELF-EMPLOYMENT TAX			
C.			
12. TOTAL CORRECTED INCOME TAX LIABILITY (Line 10 plus amounts on lines 11A through 11C)	4950 58	3345 71	
13. TOTAL TAX SHOWN ON RETURN OR AS PREVIOUSLY ADJUSTED	4485 01	3 000 -	
14. STATUTORY DEFICIENCY OR (OVERASSESSMENT) (Difference between lines 12 and 13)	465.67	345 71	
15. PENALTIES Sec 6653(a) 5%	13 28	17 27	
OTHER INFORMATION			

EXAMINING OFFICER'S SIGNATURE [illegible] DISTRICT Baltimore DATE 3/6-7

Consent to Assessment and Collection – I do not wish to exercise my appeal rights with the Internal Revenue Service or to contest in the United States Tax Court the findings in this report; therefore, I give my consent to either (1) the immediate assessment and collection of the deficiency shown on line 14, plus any interest due on this tax, and also any penalties shown on line 15 or (2) the overassessment shown on line 14, plus any interest and adjusted by any penalties shown on line 15. It is understood that this report is subject to acceptance by the District Director.

NOTE: If a joint return was filed, both taxpayers must sign	SIGNATURE OF TAXPAYER	DATE	SIGNATURE OF TAXPAYER	DATE
	[illegible]		[illegible]	
BY		TITLE		DATE

FORM [illegible] (REV. 6-70)

EXHIBIT B - IRS STATEMENT OF ADJUSTMENT FOR TAX PERIOD OF DECEMBER 31, 1967

Department of the Treasury
Internal Revenue
Service Center

22 MS2 ANDOVER, MA 01812

YX 076248446 30 6712 670 1115

MELVIN & EDYTHE LICHT
55 LOCUST AVE
CEDARHURST NY 11559

Date of This Notice
JUNE 12, 1972
Identifying Number
078-24-3446
Document Locator Number
11247-134-00708-2
Form Number Tax Period
1040 DEC. 31, 1967

◀ If you inquire about your account, please refer to these numbers or attach a copy of this notice.

STATEMENT OF ADJUSTMENT TO YOUR ACCOUNT

BALANCE DUE ON ACCOUNT BEFORE ADJUSTMENT			$.00
ADJUSTMENT COMPUTATION			
TAX- INCREASE		2,345.76	
PENALTY-	SEE EXPLANATION F	117.29	
INTEREST CHARGE		564.52	
NET ADJUSTMENT	CHARGE		3,027.57
BALANCE DUE			$3,027.57

Bank Receipt EXHIBIT B
DATE 6/16/72
RONALD E. TOLIN

K,M

The letters in the box at the left identify the statements on the back of this notice that provide further explanations and instructions.

Form 4188 (Rev. 10-71)

EXHIBIT F - IRS STATEMENT OF ADJUSTMENT FOR TAX PERIOD OF DECEMBER 31, 1966

Department of the Treasury
Internal Revenue
Service Center

22 MS2 ANDOVER, MA 01812

Date of This Notice
JUNE [illegible], 1972

Identifying Number
[illegible] 8 [illegible]

Document Locator Number
[illegible]

Form Number Tax Period
[illegible] DEC. 31, 1966

◀ If you inquire about your account, please refer to these numbers or attach a copy of this notice.

YX 076248446 30 6712 670 1115

MELVIN E EDY[illegible] LI[illegible]
55 LOCUST AV[illegible]
CEDARHURST [illegible] 9

STATEMENT OF ADJUSTMENT TO YOUR ACCOUNT

OVERPAYMENT ON ACCOUNT BEFORE ADJUSTMENT 176.00

ADJUSTMENT COMPUTATION

TAX INCREASE 2,465.00
PENALTY [illegible] SEE EXPLANATION BELOW F 123.00
INTEREST [illegible] 14.27
NET DEFICIENCY - CHARGE 3,[illegible]
AMOUNT DUE 3,134.16

Bankruptcy EXHIBIT F

DATE 6/16/72

RONALD E. TOLKIN

The letters in the box at the left identify the statements on the back of this notice that provide further explanations and instructions.

Form 4188 (Rev. 10-7[illegible])

DECISION A248

UNITED STATES DISTRICT COUPT
EASTERN DISTRICT OF NEW YORK

----------x

In the matter of :

MELVIN LICHT, : No. 67-B-668

Bankrupt :

---------- x

Appearances:

Hahn, Hessen, Margolis & Ryan, Esqs.
Attorneys for the Trustee in Bankruptcy

By: Frederick C. Stern, Esq.
Of Counsel

Michael Berman, Esq.
Attorney for Bankrupt

On June 1, 1967, John Licht, Inc., hereinafter referred to as The Corporation, filed a petition for an arrangement pursuant to Chapter XI, Section 322 of the Bankruptcy Act, 11 U.S.C., Chapter XI §722. It had been engaged for many years in the wholesale distribution of automobile parts and accessories in Brooklyn, New York. John Licht, hereinafter John, had founded the business, was its president and sole stockholder. However, for some years prior to the filing, he had not actively managed it. His son, Melvin Licht, hereinafter Melvin, the vice-president, was the general manager and operating head of the company.

John and Melvin had each guaranteed the obligations of The Corporation to the extent of over $1,000,000. and they filed individual petitions for arrangement on June 8, 1967. Neither The Corporation nor the individuals were able to effectuate an arrangement with their creditors and they all consented to be adjudicated bankrupts on July 11, 1967. Orders to that effect were signed by me on July 12, 1967.

Specifications of objection to the discharges of John and Melvin were filed by the trustee on March 6, 1970. The specifications filed against Melvin are as follows:

> "1. The bankrupt has committed an offense punishable by imprisonment as provided under Title 18, United States Code, Section 152, in that the bankrupt (a) knowingly and fraudulently concealed from the Trustee in Bankruptcy and the creditors of the estate of John Licht, Inc. (a bankrupt in proceedings before this Court) property belonging to said estate; and (b) in contemplation of the bankruptcy proceeding of John Licht, Inc. knowingly transferred to himself property of John Licht, Inc., to wit: The bankrupt obtained coupons, points, premiums and/or merchandise stamps belonging to John Licht, Inc. and entitling it to various merchandise, and used same to his own benefit and account for the acquisition of, among other things, clothing, carpeting, living room furniture, dining room furniture, television, a typewriter, a stereo outfit, a bar and lamps without paying said corporation consideration therefor.
>
> "2. The bankrupt has committed an offense punishable by imprisonment as provided under Title 18, United States Code, Section 152, in that, in contemplation of the filing of the bankruptcy

of John Licht, Inc., the bankrupt knowingly and fraudulently falsified or made a false entry in documents affecting or relating to the property or affairs of said John Licht, Inc., to wit:
(a) Entries representing accounts receivable were made in the books and records of John Licht, Inc. for merchandise which was not actually sold by it.
(b) Invoices were created for merchandise not sold or shipped by John Licht, Inc.
(c) Invoices were created for prices higher than the actual sales price of merchandise sold by John Licht, Inc.
(d) Sales of merchandise of John Licht, Inc. were made without proper invoices being created or proper entry being made as to the same in the books and records of John Licht, Inc.
(e) The books and records of John Licht, Inc. failed to disclose an account of John Licht, Inc. with the Royal National Bank and deposits made therein of funds belonging to John Licht, Inc.
(f) Records of sales made by John Licht, Inc. to customers in which the bankrupt had a financial interest were falsified in that they were recorded as made to false or non-existent customer names.
(g) Entries were made in the books of John Licht, Inc. representing returns of merchandise to said Company, none of which was actually received by it.
(h) Payments received from customers of John Licht, Inc. were credited to fictitious accounts.
(i) The books and records of John Licht, Inc. failed to reflect payments made to Gloria Takowsky, who was employed by it, and who is the sister of the bankrupt.

"3. The bankrupt has failed to keep books of account or records from which his financial condition and business transactions might be ascertained, to wit:
(a) Books and records showing his receipts of merchandise and/or coupons from John Licht, Inc. as set forth in paragraph "1" hereof and the failure to reflect the income from said transactions on his tax returns.
(b) Records disclosing the source of deposits made to the bankrupt's account with Bankers Trust Company.
(c) Records disclosing the source of bankrupt's earnings as deposited in said bank account with

Bankers Trust Company for various periods including the period from February 9, 1966 to March 4, 1966.

"4. On or about December 31, 1966, the bankrupt while engaged in business as an executive and a shareholder of WONDERAMA DISCOUNT CITY, INC. and EZ FLOW DISPENSER CORP. obtained credit from Franklin National Bank for such businesses by causing to be made or published a materially false financial statement in writing in that said statement set forth that the bankrupt's assets included a savings account valued at $4,000 and mutual funds valued at $9,000 against which there appeared no liens, encumbrances, charges or security interests, whereas in truth and in fact the aforesaid assets had been pledged to a bank as security for a loan made to the bankrupt previous to the date of the said financial statement.

"5. On or about December 31, 1966, the bankrupt while engaged in business as an officer of John Licht, Inc. obtained credit for such business by causing to be made or published a materially false financial statement for said business in writing which statement purportedly set forth the financial condition of such business and the assets and liabilities thereof, whereas in truth and in fact such financial statement understated the cash receipts of said business, failed to reflect accurately the returns and/or credits on merchandise sold by said business and failed to disclose as an expense of said business salary paid to the bankrupt's sister, Gloria Takowsky."

On March 30, 1971, a year after the specifications were filed, John and Melvin moved to dismiss Specification 1 of those filed against John and 1 and 2 of those filed against Melvin on the sole ground that they were insufficient as a matter of law since they alleged offenses which had been committed in the corporate bankruptcy and not in the individual bankruptcies.

I denied both motions and I was affirmed on review by Judge Costantino on January 20, 1972.

After many adjournments, the trials of the specifications against both John and Melvin were scheduled for June 9, 1972. The trustee elected to proceed against Melvin first, reserving his rights against John until after the decision in Melvin's case. The trial commenced on that day and was continued on June 16th, August 9th and 18th, 1972. During the course of the trial I dismissed Specification 1(a) which charged Melvin with knowingly and fraudulently concealing from the trustee and from creditors of The Corporation property belonging to it.

At the conclusion of the trial counsel requested leave to submit memoranda of law and I gave them until October 13, 1972 to submit and file them.

On November 2, 1972, the attorneys for the trustee moved, pursuant to Rule 15 of the Federal Rules of Civil Procedure, to amend the specifications of objection to conform to the proof and evidence. The motion was opposed by Melvin so that the preliminary question to be determined is whether this motion should be granted or denied.

DECISION ON THE MOTION TO AMEND

The trustee seeks to amend Specification 1(b) to add the words "and fraudulently" to it so that it will read as follows:

> "1(b) in contemplation of the bankruptcy proceeding of John Licht, Inc., knowingly and fraudulently transferred to himself property of John Licht, Inc., to wit:..." (Emphasis added)

He also seeks to amend Specification 2(g) to add the words "after the filing" to the words "in contemplation of the filing" of the bankruptcy of The Corporation so that specification will read as follows:

> "2. The bankrupt has committed an offense punishable by imprisonment as provided under Title 18, United States Code, Section 152, in that, after the filing of a bankruptcy proceeding by John Licht, Inc., and in contemplation thereof, the bankrupt knowingly and fraudulently falsified or made a false entry in documents affecting or relating to the property or affairs of said John Licht, Inc., to wit:.."
>
> * * * *
>
> "(g) Entries were made in the books of John Licht, Inc., representing returns of merchandise to said Company, none of which was actually received by it." (Emphasis mine)

The reason the trustee seeks to amend the specifications to conform to the proof is that Melvin, in his post trial memorandum, has attacked the original Specifications 1(b) and 2(g) as being defective as a matter of law. He contends that 1(b) charges him only with knowingly transferring property of The

Corporation to himself while Section 14c(1) of the Bankruptcy Act, 11 U.S.C. §32c(1), and paragraph 6 of Section 152 of Title 18 require that the transfer must be knowingly and fraudulently made to bar a discharge. He contends that Specification 2(g) charges him with making false entries in the books of The Corporation representing returns of merchandise which were not received, in contemplation of the bankruptcy of The Corporation, when, in fact, the entries were made after The Corporation had filed its petition for arrangement.

It is the trustee's position that the Federal Rules of Civil Procedure are applicable to proceedings in bankruptcy by reason of General Order 37 of the General Orders in Bankruptcy which provides that:

> "In proceedings under the Act the Rules of Civil Procedure for the District Courts of the United States shall, in so far as they are not inconsistent with the Act or with these general orders, be followed as nearly as may be."

Thus Rule 15(b) of the Federal Rules of Civil Procedure which permits amendments of pleadings to conform to the proof is applicable to this bankruptcy proceeding. It provides that:

> "When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the proceedings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of

these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence."

Melvin opposes the motion strenuously. He takes the position first, that the amendments should be denied for lack of diligence on the part of the trustee and second, that the proposed amendments would introduce new claims and would create new, independent specifications in place of those originally pleaded. He points out that the specifications had been filed some two years before the trial took place and that the trustee had had ample information on which to frame the specifications by reason of the extensive examinations which had been conducted by him in 1967 and 1968. Melvin contends that the failure of the trustee to use the word "fraudulently" in Specification 1(b) is a fatal defect which cannot be remedied at this time. He cites a multitude of cases and authorities for the propositions (1) that leave to file amended specifications will be denied unless made with due diligence and (2) that amendments to specifications will not be permitted to substitute new specifications for those that had been originally pleaded.

There is no question but that both these legal propositions are correct. However, they are not apposite to this motion. In the case at bar Melvin had notice of the trustee's position on both specifications in question long before the commencement of the trial.

So far as Specification 1(b) is concerned it is evident that the trustee meant to plead a violation covered by the sixth paragraph of Section 152 of Title 18 which reads:

> "Whoever, either individually or as an agent or officer of any person or corporation, in contemplation of a bankruptcy proceeding by or against him or any other person or corporation, or with intent to defeat the bankruptcy law, knowingly and fraudulently transfers or conceals any of his property or the property of such other person or corporation" shall be fined, [etc.] (Emphasis mine)

The original specification left out the words "and fraudulently" which made it meaningless since it did not plead a violation which would bar a discharge. It was an obvious oversight on the part of the person who drew the specification.

So far as the original specification 2(g) is concerned it is evident that the trustee meant to plead a violation of the seventh paragraph of Section 152 which reads as follows:

> "Whoever, after filing of a bankruptcy proceeding or in contemplation thereof, knowingly and fraudulently conceals, destroys, mutilates, falsifies, or makes a false entry in any document affecting or relating to the property or affairs of a bankrupt" [etc.] (emphasis added)

It alleges that Melvin in contemplation of the bankruptcy of The Corporation made entries of fictitious returns in its books. However, the trustee, in answer to the interrogatories propounded to him by Melvin's attorney, made the following answer to Interrogatory 11 which asked for "the dates of the entries alleged to have been made in the books of John Licht, Inc., representing returns of merchandise to it, none of which was actually received by it, setting forth the merchandise alleged to have been returned and the value thereof

> "A. 11. The alleged false returns referred to are covered by credit memos dated June 20, 1967, for the accounts of Essex Warehouse Distributors, A & D Auto, Midwood Automotive Distributors, H. Smith Company, Republic Battery Company, Craft, Universal Bernal, and Jade. Invoices which purport to represent merchandise returned are attached to each of these credit memos. All of the foregoing were marked as Trustee's Exhibits 1 through 8 for identification of July 11, 1967 and will be made available to the attorney for Melvin Licht upon his request for his inspection." (Emphasis supplied)

The answers to the interrogatories were served on Melvin's attorney on February 10, 1971 so that it was evident to him that the trustee, in Specification 2(g), was relying on the fictitious credit memoranda dated June 20, 1967, some nineteen days after The Corporation had filed its petition for arrangement and not on any fictitious credit memoranda issued by Melvin in contemplation of The Corporation's petition.

However, when Melvin's attorney made his motion to dismiss specifications 1 and 2 he did not include this ground, although it should have been obvious to him, after he received the answers to his interrogatories, that there was a discrepancy between the specification and the answer. He relied on one ground alone, that the acts complained of had been committed in the corporate bankruptcy proceeding and not in Melvin's. If the former ground had been included in the motion, the trustee would have moved to correct it at that time, long prior to the trial. Instead, the motion was decided on the narrow ground set forth therein.

During the course of the trial on specification 1(b) the trustee's position was that Melvin's receipt of the property which he obtained through the use of coupons or points issued to The Corporation by two of its suppliers defrauded its creditors. Melvin takes the position that failure to use the words "and fraudulently" in the specification dooms it. He also takes the position that Specification 2(g) is fatally defective because the trustee proved that the fictitious entries were made after The Corporation filed its petition rather than in contemplation thereof even though he knew from the answers to the interrogatories that this is what the trustee would rely on in his proof. Nowhere in Melvin's papers on this motion or in his memoranda submitted after trial does he allege that he was prejudiced, misled, or surprised by the trustee's proof on these specifications,

rather he relies on the narrow, technical ground that the pleading is defective and cannot now be amended.

To accept this argument would be to return to the narrow and discredited principles that pleadings are an end in themselves and that they must be couched in specific language irrespective of the merits of a claim or the proof adduced in its support. It would be contrary to the modern view embodied in the Federal Rules of Civil Procedure that pleadings are to be liberally construed to get to the merits of litigation.

Moore's Federal Practice discusses this modern, liberal view of pleadings in the 2nd Edition, Volume 3, ¶15.02 at pages 813 and 814 as follows:

> "Rule 15 is one of the most important rules that deal with pleadings. It reemphasizes and assists in attaining the objective of the rules on pleadings; that pleadings are not an end in themselves; but are only a means to the proper presentation of a case; that at all times they are to assist, not deter the disposition of litigation on the merits. The rule, when read in conjunction with other rules, clearly bears out the forgoing statement. Rule 1 provides that the rules 'shall be construed to secure the just, speedy and inexpensive determination of every action.' Rule 8(f) states the canon of construction 'all pleadings shall be so construed as to do substantial justice' and Rule 61 states in unmistakable terms that non-prejudicial error must be disregarded.
>
> * * * * *

"Third, it recognizes that at the trial stage pleadings should not be overemphasized. Preliminary to the trial, this rule, in conjunction with Rule 16 with pretrial procedure and the formulation of issues, makes it possible for the court to have pleadings amended so that the real, disputed issues are closely formulated. At the trial Rule 15 enables the case to be litigated on the merits. It does this in two ways (a) in effect pleadings are automatically amended to conform to proof on issues tried by express or implied consent, (b) if objection is made to the trial of an issue not raised by the pleadings an amendment is to be allowed unless the objecting party can show he would be actually prejudiced (Emphasis in original) and even in that case the court may permit the amendment and grant a continuance, so that the objecting party can meet the new issue, and thus obviate the prejudice which he would suffer if obliged to litigate the issue at that time. The sporting element in litigation is eliminated." (Emphasis added except where noted).

The principles enunciated above have been followed consistently by the courts. In In re Schlesinger 31 F.2d 789, aff'd. 36 F. 2d 191, the court stated the following at page 791:

"The right of a creditor to amend his specifications in opposition to a bankrupt's discharge is a valuable right, and should be freely granted in the interest of justice, In re Carley (C.C.A.3d Cir.) 117 F. 130. To have refused the right in this case would have been in the interest of injustice. The original specifications, while not presenting specification 5 in terms, in their general nature called for and developed the very facts on which Specification 5 was based, and to have denied the creditors the right to amend their pleadings so as to specifically charge against a bankrupt the facts which his own testimony disclosed, would have been a great abuse of judicial discretion."

Judge Augustus N. Hand, in the case of In re Finder, 61 F.2d 960, at page 961, held as follows:

> "While there was ample ground for allowance of the motion to amend the sixth specification, we think such a motion was really unnecessary. The bankrupt was sufficiently warned in Specifications Fifth and Sixth of the charges that were finally proved against him. The principal facts (including the allegations of intent to hinder, delay and defraud creditors) were plainly set forth in these specifications. Whether the purchase and use of a round-trip ticket and the withdrawal of funds for the Florida excursion involved a 'transfer, removal, destruction' or 'concealment' was largely a question of law. That the objecting creditor characterized the transactions as transfers rather than removals, destructions, or concealments and failed to present in his specifications the proper theory for barring the discharge was not a fatal variance. The specifications may be deemed amended so far as necessary to conform to the proof." (Emphasis mine)

Again, in the case of In re Adler 79 F. 2d 840, Judge Hand permitted specifications of objection to be amended to conform to the evidence and proof. He said, at page 842:

> "The allegation in the specification that the $900 note was delivered to Goldstandt by the bankrupt in October, 1932, instead of August, 1932, and that the order garnishing her salary was made in November, 1932, instead of September 26, 1932, was not strictly proved, but the proof adduced was not a fatal variance and the specification should be regarded as amended to conform to the proof. In re Finder (C.C.A., 2d Cir.), 61 F. (2d) 960." (Emphasis added)

In the case at bar, Melvin was sufficiently apprised of the charges which he would have to meet in the specifications of objection filed against him. The answers to his interrogatories gave him the particulars on which the trustee would rely in proving specification 2(g). No objection was made, at the

trial, to the introduction in evidence of the fictitious credit memoranda (T. 1., August 9, 1972, pp. 26-37) and it was obvious, by their dates, June 20, 1967, that they had been issued <u>after</u> The Corporation had filed its petition for an arrangement and <u>not</u> in contemplation thereof. He had had ample time to prepare his defense to the specifications and was not surprised by the trustee's proof.

The trustee's motion to conform the pleadings to the proof and evidence and to amend the specifications of objection is granted. IT IS SO ORDERED.

Dated: Brooklyn, New York,
April 12 1973

Manuel J. Price
Referee in Bankruptcy

DECISION ON THE SPECIFICATIONS
OF OBJECTION TO DISCHARGE

Melvin was the only witness called by the trustee at that trial. He testified that:

He was thoroughly familiar with all aspects of The Corporation's business which had been founded by his father some fifty years before. He had started working there in 1949, was put in charge in 1950 when John went to Florida and had managed it continuously from that time until it was adjudicated a bankrupt except for a period of two years when he was in the military service (S.M., June 16, 1972, pp. 37 and 38).

During the entire period of his management The Corporation was financed by means of large bank loans which it had to pay off periodically. It had done business with Bankers Trust Company until about 1965 or 1966 when it transferred its account to Franklin National Bank, hereinafter Franklin, which loaned it $425,000, on an unsecured basis, due on November 1, 1966. Prior to the due date the bank insisted that the loan be paid when due and remain off its books for a period of thirty days, after which, it indicated that it would grant a new loan to The Corporation for the same amount or more (S.M., June 16, 1972, pp. 43-45). In order to pay off the loan he purchased large quanties of merchandise, on behalf of The Corporation, from the A. C. Division of General Motors, hereinafter AC,

The Westinghouse Company, hereinafter Westinghouse, and the General Electric Company hereinafter General Electric, on extended billing terms of one hundred and twenty days which he sold to The Corporation's customers at cost or below to raise cash quickly (S. M., June 9, 1972, pp 85-96, June 16, 1972, pp. 107-111). The Franklin loan was paid off by November 1, 1966 and he anticipated that it would grant a new loan to The Corporation in excess of $425,000 on November 30, 1966. On that day he was told by an officer of the bank that a loan of only $20[illegible]000 would be made due to the fact that the newspapers had reported that Admiral Automotive Company, a large customer of The Corporation which owed it a substantial sum of money and some of whose notes it had discounted with Franklin, had been charged with receiving a carload of stolen merchandise. (S. M., June 9, 1972, pp. 109-111; June 16, 1972, pp. 45 and 46).

The refusal of Franklin to lend The Corporation the additional $225,000 created financial problems for it since he had anticipated using these funds to pay for the merchandise it had bought on extended billing and had sold in order to pay off the Franklin loan. (S.M.,June 9, 1972, p. 83; June 16, 1972, p. 92). In addition, AC, one of its major suppliers, refused to extend any further credit to it in November, 1966 and stopped shipping it merchandise.(S.M., August 9, 1972, p. 13).

The Corporation had been a large distributor of AC products for many years. This company had a system of rebates under which it gave its distributors an additional discount of 10%, over and above its regular discount, on merchandise which they sold to customers designated by it as wholesale accounts. The distributors, including The Corporation, were not restricted in their sales of AC products but they would not get the additional 10% discount on AC merchandise sold by them to non-designated accounts. (S.M., June 16, 1972, pp. 135-139; August 9, 1972, pp. 62-64)

Many of The Corporation's costomers were the so-called designated accounts, however, it sold a great deal of AC merchandise to non-designated accounts on which it would not be entitled to the additional discount. In order to get the extra 10% discount on these sales he would have The Corporation make out invoices to designated accounts for AC merchandise which would be sold to non-designated accounts by means of what he called "pro-invoicing". This was the creation of fictitious invoices to designated accounts prior to the receipt of the merchandise from AC. On receipt of the merchandise it was sold to non-designated accounts which were billed for it. The books of The Corporation would reflect the fictitious sales to the designated accounts while the actual sales would be entered on sheets of paper kept on a clipboard and when payment therefor was received it was

credited to the designated accounts to which they had been charged. In this way, the sales to the non-designated accounts were concealed from the AC auditors who checked The Corporation's books periodically (S.M.,June 16, 1972, pp. 136-147; August 9, 1972, pp. 86-97).

In October, November or December, 1966, The Corporation had "pre-invoiced" about $120,000 worth of AC merchandise to various designated accounts, among which were: Midwood Auto Distributors, Harry Smith, Essex Warehouse, Jade, A&D, and Craft. (S.M., August 9, 1972, pp. 3-12). Due to the fact that AC had cut off The Corporation's credit these charges remained on its books even though no merchandise of any kind had been shipped to any of its customers to cover them (S.M., June 9,1972, pp. 103-104).

The Corporation continued to have financial difficulties in January and February, 1967, particularly with AC, Westinghouse and General Electric to which it owed very substantial sums of money. In addition, in August, 1966, in order to raise money to pay off the Franklin loan, he had given five notes of The Corporation, signed by him in blank, to one Sy Lichten, the principal of Admiral Automotive Company (Admiral). They were accomodation notes which were to be filled in by Lichten for a total of $100,000 and discounted by Admiral which was to turn the money over to The Corporation. Two weeks thereafter he

was told by Lichten that Admiral had not been able to discount the notes and when he asked for their return he was told that they had been destroyed. However, in January or February of 1967, he was informed by Franklin that the first of this series of notes had been presented for payment and that there were insufficient funds in The Corporation's account to pay it. (S. M., June 16, 1972, pp. 89-95).

Because of The Corporation's financial difficulties he commenced negotiations in February, 1967, with Transamerica Financial Corporation, hereinafter Transamerica, a finance company, for additional financing. On March 1, 1967, The Corporation entered into an agreement with Transamerica whereby it mortgaged its real estate, assigned its inventory and accounts receivable and agreed to finance its future accounts receivable with it in exchange for a loan to it by Transamerica of $400,000. (S. M., June 16, 1972, pp. 76-79).

This was not enough to pay The Corporation's main suppliers the amounts which it owed them. Among others, it owed AC over $300,000 and Westinghouse over $120,000 so that it would be necessary for The Corporation to get an extension of time to pay them. In order to accomplish this he first communicated with AC's metropolitan area general sales manager and made a proposal to him whereby The Corporation would pay the account over a period of time while paying for all new business on a

current basis. AC accepted his proposal on condition that he, his wife, his father and mother guarantee the account. They executed the guarantees on March 9, 1967, and AC again started doing business with The Corporation. During this time he communicated with Westinghouse and made the same proposal to it. Westinghouse accepted it provided The Corporation gave it a series of notes, payable monthly, for $3,000 each, endorsed by him and his father. This series of notes was executed on March 6, 1967 and endorsed by them (S.M., June 16, 1972, pp. 51-59 and bankrupt's Exhibit C).

The Corporation continued to have financial difficulties which were aggravated by the demand on it to pay the $100,000 in accomodation notes which it had executed in Admiral's favor for which it had received no consideration. So, in spite of its receipt of $400,000 from Transamerica and its having obtained extensions of time to pay the AC and Westinghouse accounts, he consulted Michael Berman, Esq., an insolvency expert, sometime in May 1966, concerning its affairs. Mr. Berman, who represents The Corporation, John and Melvin in their proceedings in this Court, caused an audit of The Corporation's books to be made by Leon I. Radin & Company, certified public accountants, after which meetings of creditors were called which resulted in the filing by The Corporation of a petition for arrangement on June 1, 1967 (S.M., June 16, 1972, pp. 128-132) John and Melvin had

guaranteed the accounts of many of its suppliers and they filed individual petitions for arrangement on June 8, 1967. Neither The Corporation nor the individuals were able to propose a plan and they all consented to be adjudicated bankrupts on July 11, 1967.

SPECIFICATION 1(b)

Two of The Corporations' suppliers, the Thermoid Division of the H. K. Porter Company, hereinafter Thermoid, and AC had sales promotion plans to increase the sales of their products. The AC plan had been in existence for about twenty years and The Thermoid plan for about five years prior to The Comporation's bankruptcy. Under these plans The Corporation could either earn points, premiums or coupons or purchase them at a discount, depending on the volume or type of business which it did with these suppliers. The points could then be redeemed for almost any type of merchandise through representatives designated by them (S.M.,June 9, 1972, pp. 5, 19-28). The value of these points or premiums was not insubstantial. For the five year period prior to 1967 The Corporation received points valued at between $50,000 and $60,000 a year which were to be given to its sales employees or its customers to stimulate the sales of Thermoid and AC products. (S.M., June 16, 1972, p. 38; June 9, 1972, pp. 22-29).

Melvin admitted that he had taken points valued at $16,000 from The Corporation during the two year period prior to June 1, 1967 which were used by him in furnishing his home, for wearing apparel and other items. He admitted using the points to get a vacuum cleaner, furniture of various kinds, carpeting, linens, a camera, clothing for himself and his family, an electric built-in oven, a radio and stereo components in the period from January 16, 1966 through April 28, 1967. (S.M., June 9, 1972, pp. 5-19, 29-49; June 16, 1972, pp. 8-19 and Exhibits 1, 2, 3, 4, 5, 7, 11, 16, 17, 18, 19, 20, 21, 22 and 23).

Melvin contends: First, that at the time he took the coupons from The Corporation in order to get the merchandise covered by the exhibits referred to above he did not expect it to go into a bankruptcy proceeding; that he was doing everything within his power to keep it going including factoring with Transamerica and the execution of guarantees by himself and his wife which resulted in the loss of their home so that these acts were not done "in contemplation"of The Corporation's bankruptcy; Second, that the points were taken by him as "additional compensation" for the services which he was rendering to The Corporation in view of his small salary of $150 per week and that he had made an arrangement with the Internal Revenue Service for the payment of additional income taxes on their value.

In support of the first contention he testified, under questioning by his attorney, on June 16, 1972, as follows, at page 43:

> "Q Mr. Licht, I show you Exhibits 1,2,3,4, 5,7,11,16,17,18,19,20,21,22, 23 and ask you to look at each of these exhibits and tell the Court, at the time you ordered the merchandise set forth on those exhibits did you as the general operating principal of John Licht, Inc., contemplate it going into a bankruptcy proceeding?
>
> "A No. No, I did not contemplate it.
>
> "Q Look at them all and carefully consider it before you answer.
>
> "A At no time when I ordered these did I contemplate going into bankruptcy."

Again, in that same transcript he testified as follows, at pages 127 and 128:

> "Q Mr. Licht, was your wife liable for any obligations of John Licht, Inc. prior to the execution by her of the guarantee which is Bankrupt's Exhibit C?
>
> "A No, she wasn't.
>
> "Q Can you tell us wherein (sic) your mind in March of 1967, after you had obtained a $200,000 loan from Franklin Bank and a $400,000 loan from Transamerica, did you think that you would be able to continue your business and pay your debts?
>
> "A Yes, I did.

"Q Did you at that time contemplate going into any bankruptcy proceeding?

"A None whatsoever.

"Q When was the first time that you considered bankruptcy at all?

"A The end of May, when I came to you and --

"Q That was the beginning of May.

"A Oh, beginning of May. I'm sorry.

"Q Yes.

"A The beginning of May. And your accountant came in and went over my books, which were far behind due to the illness of my accountant, and when I saw the true light we realized how bad things were.

"Q And prior to that time, you didn't know actually what your real financial condition was?

"A No, I did not."

It was only after vigorous cross examination that he admitted that it might have been as early as the last week in April, 1967 that he consulted Mr. Berman after which there was an audit of The Corporation's books which revealed its true condition. (S.M., June 16, 1972, pp. 129-131). As a matter of fact he testified, at page 132, that the purpose of the audit was "to see what we were doing before we had any thought of going to creditors. We had first to find out the condition I was in before we had any thought of going to creditors." (Emphasis mine)

At one point in his testimony he went even further than his attorney expected on the question of "contemplation of bankruptcy" when he testified, at pages 85 and 86 of the transcript of August 9, 1972, as follows:

> "Q When is the first time you contemplated bankruptcy? When I say "you" again I am referring to the corporation. When did John Licht, Inc., or you, for John Licht, contemplate bankruptcy?
>
> "A. July 11, 1967.
>
> "Q Well, now, no, no. You filed a petition for an arrangement in June, didn't you? You called a meeting of creditors early -- I believe it was early in June or late May.
>
> "A I didn't contemplate bankruptcy even then.
>
> "Q What did you hope to do?
>
> "A I hoped to continue on, and hold on to what I had.
>
> "Q You hoped to work out a settlement with your creditors?
>
> "A Yes."

This point is argued vigorously by Melvin in his post trial memorandum. At page 13 thereof we find the following:

> "6. The bankrupt did not contemplate bankruptcy for John Licht, Inc. until May, 1967 and even at that time he hoped to be able to work out an arrangement with the creditors of John Licht, Inc. which would enable him to continue the operation of its business." (Emphasis mine).

The May date is important because Melvin used The Corporation's AC coupons to order the last two items on April 20 and 28, 1967. They consisted of a Fisher stereo amplifier for 50,130 points, ordered on April 20, 1967 and marked Trustee's Exhibit 22 and a Dual turntable with base, a cartridge and a Fisher Multiplex for 84,562 points, ordered on April 28, 1967 and marked Trustee's Exhibit 23. The question is, when he ordered these stereo components did Melvin contemplate that The Corporation would file a bankruptcy proceeding?

The answer must be yes. An examination of the petition for an arrangement filed in this Court by The Corporation reveals that it was obviously prepared in April, 1967. It was ostensibly executed on June 1, 1967 but all of the dates were originally typed in as April, crossed out, and changed to June. The corporate secretary's certificate, signed by Melvin, alleges that on April 19, 1967 the Board of Directors deemed "it desirable and in the best interests of this corporation, that a petition be filed proposing an arrangement under the provisions of Chapter XI of the Bankruptcy Act, and that either John Licht as president, or Melvin Licht, as vice president, be and either one of them are hereby authorized to execute all necessary papers for that purpose." It went on to authorize the retention of "Michael Berman, Esq., of 55 Liberty Street, New York, New York, for the purpose of filing the said petition for an

arrangement, and to take all necessary steps to carry out the same." (Emphasis mine).

It is evident therefore, that Melvin must have consulted Mr. Berman concerning The Corporation's financial problems prior to April 19, 1967 after which they must have come to the conclusion that it would be necessary for The Corporation to seek relief under Chapter XI of the Bankruptcy Act. Melvin must have known what its financial condition was at the time The Corporate Resolution was executed. In my opinion, his testimony that he did not know what its financial condition was until after the audit by Leon I. Radin and Company is palpably untrue because the audit was as of April 25, 1967, some six days after The Corporation had been authorized to seek relief under the Bankruptcy Act. The report prepared by the accountants was marked Trustee's Exhibit 25 and it shows that The Corporation was hopelessly insolvent. It had assets of $666,347.58 against liabilities of $1,528,860.09 for a capital deficiency of $862,512.51 and that it had suffered a net loss of $647,647.76 in the four month period from January 1, 1967 to April 25, 1967. It is inconceivable to me that as the general manager of The Corporation, in complete charge of its operations, that Melvin did not know that its financial condition was desperate when he consulted Mr. Berman and that he learned of it only after the audit. If his testimony to that effect is true why was The

Corporate Resolution adopted on April 19, 1967, six days before it was completed? When Melvin ordered the stereo components on April 20 and 28, 1967 (Exhibits 22 and 23) he knew that The Corporation was going to file a petition for an arrangement and they were ordered "in contemplation" of that filing under the Bankruptcy Act.

I come now to Melvin's second contention, that the points were received by him as "additional compensation" for his services to The Corporation in view of his salary of only $150 per week and that he had made arrangements to pay additional taxes on their value (S.M., June 16, 1967 pp. 38-42). Although Melvin ostensibly drew only $150 a week as salary from The Corporation he received at least one additional fringe benefit. The Corporation supplied him with a Cadillac car which it rented for his use. (S.M., Aug. 18, 1972 pp. 38 and 39). He admitted that the value of the points which he received from The Corporation in 1966 and 1967 was not reported by him in his income tax return for those years (S.M., June 16, 1972 pp. 63-65) He testified that he considered them in the same category as the trading stamps he would get for purchasing gasoline at a service station and that he did not consider them as income since he did not receive cash (id., p. 65). He admitted, however, that when he was examined in 1967 he had testified that the points were taken by him as compensation for his services and that there was discussion of a possible tax liability on his part. (id., pp.

68 and 69). In spite of that, when he prepared his 1967 tax return, in 1968, he did not include this "additional compensation" therein and it was only after the trustee's attorneys notified the Internal Revenue Service of his testimony and he was called in by it sometime in 1972 that he consented to an audit change which increased his reported income for 1966 and 1967 by $8,605 and $7,825 respectively and increased his tax liability for those years by $2,465.67 and $2,345.76 (id. pp. 69-74 and Bankrupt's Exhibit A).

I do not believe his testimony that he did not know that he was required to include the value of the coupons in his income tax return if, in fact, it was "additional compensation." Melvin is a shrewd, sophisticated, businessman who, by his own admission, operated a business which involved hundreds of thousands of dollars. He is not a poor wage earner who might not know that he was required to report, as additional income, some minimal premiums which he might have received. The "additional compensation" Melvin received in this manner was over $8,000 in 1966 and almost $8,000 in 1967, which is more than he was supposed to be earning as salary from The Corporation in those years.

In my opinion, Melvin knowingly and fraudulently transfered to himself the points necessary to obtain the stereo components covered by the orders of April 20 and 28, 1967

(Exhibits 22 and 23) at a time when he had decided, as the operating officer of The Corporation, that it should file a petition for an arrangement pursuant to Chapter XI of the Bankruptcy Act. These components could hardly have been for his own use for he had ordered two turntables, two cartridges and a Fisher stero multiplex for a total of 109,814 points on December 6, 1966, less than four months before, which were delivered to him (Exhibit 18). The orders represented by Exhibits 22 and 23 were his way of divesting The Corporation of the value of the points and syphoning it to himself, a course of action in which he was evidently successful since he testified that when it was adjudicated a bankrupt it had no points left (S. M., August 18, 1972, p.31).

Specification 1(b) is sustained so far as the coupons, points, premiums or merchandise stamps necessary to obtain the stereo components ordered by Melvin on April 20 and 28, 1967, marked Trustee's Exhibits 22 and 23, are concerned.

SPECIFICATION 2

Melvin freely admitted that he had caused:
(a) entries representing accounts receivable to be made in the books and records of The Corporation for merchandise which was not sold by it (S. M., August 9, 1972, pp. 3-10); (b) invoices to be created for merchandise not sold or shipped by The Corporation (S. M., June 16, 1972, pp. 98-101; August 9, 1972, pp. 14-15).

(c) invoices to be created for prices higher than the actual sales price of merchandise sold by The Corporation (S.M., August 9, 1972, pp. 18 and 19) and (d) sales of merchandise of The Corporation to be made without proper invoices being created or proper entry being made as to the same in the books and records of The Corporation (S. M., August 9, 1972, pp. 3-19). However, he testified that all of these things were part of his method of "pre-invoicing" AC merchandise and that The Corporation had conducted its business for"forty years" in this manner so that these acts were not done"in contemplation" of The Corporation's bankruptcy (S. M., June 16, 1972, pp. 100-101; August 9, 1972, pp. 77-83).

Paragraph 7 of Section 152 of Title 18, U. S. Code requires that the acts charged therein be done either "after the filing of a bankruptcy proceeding or in contemplation thereof" in order to bar a bankrupt's discharge under Section 14c(1) of the Bankruptcy Act, 11 U.S.C. §32c(1). In view of Melvin's testimony that the books of The Corporation had been falsified for "forty years" Specifications 2(a), (b), (c) and (d) must be dismissed.

Specification (e) charges that The Corporation's books and records failed to disclose an account in the Royal National Bank. The trustee submitted no proof on this specification and it is dismissed.(S.M., August 9, 1972, pp. 19-22).

Specification (f) charges that records of sales made by The Corporation to customers in which Melvin had a financial interest were falsified in that they were recorded as made to false and non-existent customer names. The only evidence adduced by the trustee thereon was that Melvin had an interest in a company known as Wonderama Automotive Discount City to which The Corporation sold merchandise which it billed under the name of NBC. Melvin testified that he caused The Corporation to bill it under this name rather than Wonderama, to hide, from his suppliers, the fact that it was selling to a corporation in which he had an interest.(S. M., August 9, 1972, pp. 21-25). Here too, there is no proof that the falsification of The Corporation's books was done "in contemplation" of its bankruptcy and it is dismissed.

Specification 2 (g) charges Melvin with causing entries to be made in the books of The Corporation, after it had filed its Chapter XI petition in this court, of returns of merchandise which were not actually received by it. It concerns itself with the "pre-invoiced" accounts referred to at page 19 of this opinion aggregating some $120,000 which Melvin caused to be put on The Corporation's books in October, November or December, 1966 for which it had not received merchandise from AC and which remained thereon until June 20, 1967 when he issued credit memoranda to the customers named therein to wipe

them off its books.

He admitted that the invoices creating the accounts in the first place were fictitious and that when he ordered the credit memoranda to be issued they were for merchandise which was not returned to The Corporation (S.M., June 16, 1972, pp. 98-101; August 9, 1972, pp. 26-46 and Trustee's Exhibits 26 through 38). He went so far as to testify that he just made up credits out of his head just as the invoices had been (S.M., June 16, 1972, p. 101).

It is significant to note that two of the credit memoranda, Trustee's Exhibit 26 and 30, for $21,000 and $18,215.91 respectively, were issued to companies which employed Melvin after the liquidation of The Corporation in bankruptcy. They were, Essex Warehouse Distributors where he had been employed for four and a half years at the time of the trial of the specifications and Republic Battery which employed him immediately after The Corporation was adjudicated (S.M., June 9, 1972 p. 4).

The trustee proved all of the elements required by the seventh paragraph of Section 152 of Title 18, to wit, that:

1. The Corporation had filed a bankruptcy proceeding, its petition for an arrangement, on June 1, 1967.

2. On June 20, 1967 Melvin knowingly and fraudulently caused the credit memoranda to be issued aggregating some

$120,000.

3. He knew that no merchandise listed in the credit memoranda had been or would be returned to The Corporation.

4. The entries in these documents were false.

5. They affected and related to The Corporation's property.

Specification 2(g) is sustained.

Specification 2(h) also arises out of the "pre-invoicing" of AC materials. It charges Melvin with crediting payments received by The Corporation to fictitious accounts. He admitted that he had ordered this done. (S.M., August 9, 1972, pp 46-48) but he contends that this practice had been in effect long prior to the filing under Chapter XI and was not done "in contemplation" of the bankruptcy of The Corporation. This specification must be dismissed for the same reason that Specification 2(a), (b), (c) and (d) were dismissed.

Specification 2(i) charges that the books and records of The Corporation failed to reflect payments made to his sister Gloria Takowsky, who was employed by it. This specification involves merchandise which Mrs. Takowsky received through the AC premium point program. When Melvin was questioned about it on September 22, 1967 he testified that his sister received it as compensation for her services. However, during the

course of the trial on the specifications, he testified that she paid The Corporation in cash for it. (S. M., August 9, 1972, pp. 49-62). He explained the inconsistency in his testimony by saying that he had discussed the matter with her between 1967 and 1972 and that she had told him that she had paid for the merchandise which she had gotten with the points.

I do not believe the testimony which Melvin gave on this specification. I cannot conceive of his not knowing that his sister was paying for the jewelry and clothing which she was getting with the AC coupons if, in fact, she was paying The Corporation for them. It seems to me that they would have discussed it and that she would have told him that she was paying for them in cash long prior to his testimony in 1967. Also, Melvin was in complete charge of The Corporation's operations and he would have been told by the bookkeeper or some other employee that Mrs. Takowsky was paying for the points. It is more likely that Melvin gave them to her without any payment since this was a family business in which she assisted. However, there is no proof that the failure of The Corporation's books to reflect the payments to her was "in contemplation" of its bankruptcy so that this specification must be dismissed.

SPECIFICATION 3.

This specification charges Melvin with failure to keep books of account and records from which his financial condition and business transactions might be ascertained as required by Section 14c(2) of the Bankruptcy Act, 11 U.S.C. 32c(2). The proof adduced on this specification was not sufficient to sustain it. In re Halpern, 262 F. Supp. 271; In re Leichter, 197 F. 2d 955, cert. denied, sub nom Dworsky v. Leichter, 344 U.S. 914. As a matter of fact, the trustee did not discuss this specification or Specifications 4 and 5 in his post-trial memorandum.

SPECIFICATIONS 4 and 5

Specification 4 charges that Melvin, while an officer and executive of Wonderama Discount City, Inc. and E.Z.Flow Dispenser Corp., obtained credit from Franklin for them by issuing a false financial statement in writing.

Specification 5 charges that while an officer of The Corporation, he obtained credit for it by issuing a false financial statement in writing on its behalf.

There was no proof, on either specification, that there was any reliance on these financial statements by Franklin or any creditor. The proof on both of them fell far short of that necessary to sustain them. Morimura, Arai & Co., v. Taback,

279 U.S. 24; Schapiro v. Tweedie Footwear Corp., 131 F. 2d 876.

Specifications 4 and 5 are dismissed.

I have sustained Specification 1(b) and 2(g) so that Melvin's discharge must be denied. I am cognizant of the admonition that the Bankruptcy Act must be liberally construed in favor of the bankrupt and that it was the intent of Congress to give the honest debtor an opportunity for a fresh start. Local Loan v. Hunt, 292 U.S. 234; Jones v. Gertz, 121 F. 2d 782; Roberts v. Ford and Son, 169 F. 2d 151; In re Leichter, supra; In re Tabibian, 289 F. 2d 793. Is Melvin the honest debtor who should be the recipient of this beneficent policy which allows him to get a new start in business and in life free from his debts?

Melvin is a bankrupt who admitted, on the trial of these specifications, that during his entire business career he caused The Corporation to "pre-invoice" AC merchandise. "Pre-invoicing" was his euphemism for falsifying The Corporation's books in order to obtain an additional discount of 10% from this supplier. At no time did The Corporation's books accurately reflect the AC transactions recorded therein. He also admitted that after he falsified his accounts receivable to the extent of some $120,000 in October, November, or December, 1966 by the preparation of fictitious invoices for merchandise which he

never received from AC, he assigned all his accounts receivable, including the fictitious ones, to Transamerica, on March 1, 1967, as partial security for the $400,000 loan without informing it that the fictitious accounts were worthless. He admitted further, that when he consulted Mr. Berman he did not tell him or Leon I. Radin & Company, the certified public accountants retained by him to make an audit of The Corporation's books, that it was carrying $120,000 in fictitious accounts receivable therein. He was silent while the accountants examined the books and prepared their report as of April 25, 1967 which was shown to The Corporation's creditors at meetings called by Mr. Berman to attempt an adjustment of its financial difficulties which contained a figure for accounts receivable which was inaccurate by $120,000 (S.M., June 16, 1972, pp. 131-135 and Trustee's Exhibit 25). His explanation was that he "didn't know what the total amount was." (id. p. 133). The same inflated figure $426,481.85 for its accounts receivable was used by The Corporation in its summary of assets and liabilities attached to its petition for arrangement which was signed by Melvin. It was only when The Corporation's adjudication was imminent that it occurred to him that these fictitious accounts should be eliminated by the issuance of the credit memoranda which were the basis for Specification 2(g).

During the course of the trial on the specifications of objection I was able to observe his demeanor on the witness stand. His testimony contained many inconsistencies, some of which I have referred to in this opinion. He impressed me as a person who would do anything or say anything which was expedient at the moment irrespective of its accuracy. He is hardly the honest debtor who is entitled to the consideration and compassion referred to in the cases cited above. In my opinion the following quotation from the case of Paton v. England 462 F. 2d 1099, 1100 is applicable to the case at bar.

> "....the court, over the years, has frequently pointed out that the Congressional solicitude is limited to, and the prophylactic benefit of a discharge is exclusively reserved for, 'the honest and unfortunate debtor....' The purpose being to afford him 'a new opportunity in life and a clear field for future effort unhampered by the pressure and discouragement of a pre-existing debt'. Local Loan Co. v Hunt, 292 U.S. 234, 244, 54 S. Ct. 695, 699, 78 L. Ed. 1230 (1934). There can be no doubt of the power of Congress to discriminate between the worthy and unworthy debtor with repect to the matter of discharge. Hanover National Bank v. Moyses, 186 U. S. 181, 192, 22 S. Ct. 857, 46 L. Ed. 1113 (1902) (Emphasis mine).

The bankrupt's discharge is denied. Settle order within ten days hereof.

Dated: Brooklyn, New York
April 1st 1973

Manuel J. Price
Referee in Bankruptcy

1. Since 1950 Melvin Licht (Melvin) was vice-president and general manager of John Licht, Inc., (The Corporation) which had been founded by his father, John Licht (John), many years before.

2. The Corporation was a large wholesale distributor of automobile supplies and accessories in Brooklyn, New York.

3. In 1965 or early 1966 The Corporation borrowed $425,000 from Franklin National Bank (Franklin), on an unsecured basis, due on November 1, 1966.

4. When the loan came due Franklin insisted that it be paid and that it remain off its books for thirty days, after which, it indicated that it would grant a new loan for at least the same amount.

5. In order to raise cash to pay off the Franklin loan The Corporation purchased large quanities of merchandise from the AC Division of General Motors (AC), The Westinghouse Corporation (Westinghouse) and General Electric Company (General Electric) on extended billing terms which it sold to its customers at cost or below.

6. On November 30, 1966 Melvin was advised by Franklin that a loan of only $200,000 would be made by reason of the fact that one of The Corporation's large customers, Admiral Automotive Company, some of whose notes had been discounted by

it with Franklin, had been indicted for receiving a carload of stolen merchandise.

7. The failure of Franklin to lend The Corporation the full $425,000 created financial problems for it.

8. In November, 1966, The Corporation's problems were aggravated by the fact that AC, one of its major suppliers, refused to extend any further credit to it.

9. AC had a system of rebates whereby its distributors would get an additional 10% discount for selling its merchandise to accounts designated by it.

10. In order to get the 10% discount on AC merchandise sold by The Corporation to non-designated accounts, Melvin caused its books to be falsified to show sales to designated accounts which were actually being made to non-designated accounts.

11. During October, November or December, 1966 Melvin caused The Corporation to create approximately $120,000 in fictitious accounts receivable to designated accounts on which no merchandise of any kind was shipped.

12. In January or February, 1967, the first of a series of accomodation notes, executed by Melvin, on behalf of The Corporation, in August 1966, was presented for payment on its account at Franklin. These notes, five in all, aggregating $100,000, had been given by Melvin to an officer of Admiral

Automotive Company to be discounted by it with the understanding that the funds would be turned over to The Corporation. He had been told that Admiral had been unable to discount them and that they had been destroyed. Actually they had been negotiated by Admiral which did not account to The Corporation for the proceeds.

13. In order to raise additional funds to meet its pressing obligations The Corporation entered into an agreement with Transamerica Financial Corporation (Transamerica) on March 1, 1967 whereby it borrowed $400,000 on the security of its real-estate, accounts receivable and inventory.

14. In order to obtain an extension of time for The Corporation to pay AC the sum of about $300,000 which it owed it, Melvin,John and their wives guaranteed the account on March 9, 1967.

15. On March 16, 1967, John and Melvin endorsed a series of notes to get an extension of time for The Corporation to pay the Westinghouse account of about $120,000.

16. Sometime prior to April 19, 1967 Melvin consulted Michael Berman, an insolvency specialist, concerning The Corporation's financial affairs.

17. On April 19, 1967, The Corporation's Board of Directors authorized it to file a petition for an arrangement pursuant to Chapter XI of the Bankruptcy Act.

18. Meetings of The Corporation's creditors were called and on June 1, 1967, The Corporation filed a petition for an

arrangement pursuant to Chapter XI, Section 322 of the Bankruptcy Act, 11 U.S.C. §722.

19. Melvin and John, having guaranteed many of The Corporation's obligations, filed petitions for arrangement under Chapter XI, on June 8, 1967.

20. On July 11, 1967, The Corporation, John and Melvin consented to be adjudicated bankrupts.

21. Specification of objection 1(a) was dismissed during the course of the trial.

SPECIFICATION 1(b)

22. Two of The Corporation's suppliers, AC and Thermoid division of H.K.Porter Company (Thermoid) had sales promotion plans in which The Corporation participated.

23. Under these plans The Corporation could either earn points, premiums or coupons or purchase them at a discount depending on the volume or type of business which The Corporation did with them.

24. The points obtained in this way could be redeemed for almost any type of merchandise through representatives designated by AC and Thermoid.

25. For the five year period prior to 1967 The Corporation had earned points valued at between $50,000 and $60,000 a year.

26. Melvin took $16,000 worth of points for his own use during the two year period prior to June 1, 1967, which he did

not report in the tax returns filed by him for those years.

27. Among the merchandise obtained by him for the points were stereo components which were ordered by him on April 20 and 28, 1967.

28. On those dates he had already decided, as general manager of The Corporation, that it would have to file a petition for an arrangement pursuant to Chapter XI of the Bankruptcy Act.

29. He had gotten stereo components of a similar kind on a prior order dated December 6, 1966.

30. On the date of adjudication The Corporation had no points on hand.

SPECIFICATIONS 2(a), (b), (c), (d) and (h)

31. For many years prior to its bankruptcy Melvin, in order to cover up the sales of AC merchandise to non-designated accounts and to get the 10% additional discount:

(a) Caused entries representing accounts receivable to be made in The Corporation's books and records for merchandise which was not sold by it.

(b) Caused invoices to be created for merchandise not sold or shipped by it.

(c) Caused invoices to be created for prices higher than the actual sales price of merchandise sold by it.

(d) Caused sales of merchandise of The Corporation to be made without proper invoices being created or proper entry being made as to the same in its books and records.

(h) Caused payments received by it to be credited to fictitious accounts

SPECIFICATION 2(f)

32. Melvin had a financial interest in a company known as Wonderama Automotive Discount City to which The Corporation sold merchandise.

33. Melvin caused The Corporation to bill Wonderama under the name of NBC, which was fictitious, in order to conceal from his suppliers the fact that it was selling to a company in which he had an interest.

34. This practise antedated The Corporation's bankruptcy by many years.

SPECIFICATION 2(g)

35. On June 20, 1967 Melvin caused The Corporation to issue credit memoranda to eliminate from its books the approximately $120,000 in fictitious accounts receivable referred to in Finding of Fact Number 11.

36. He knew that no merchandise listed on the credit memoranda had been or would be returned and that the entries in these documents was false.

SPECIFICATION 2(1)

37. The books and records of The Corporation failed to reflect payments made to Mrs. Gloria Takowsky, Melvin's sister, of points which she received for services performed by her for it.

SPECIFICATION 3.

38. Insufficient proof was adduced on this specification to sustain it.

SPECIFICATION 4 and 5.

39. There was no proof that there was reliance by either Franklin or any creditor on the financial statements issued by Melvin.

CONCLUSIONS OF LAW

SPECIFICATION 1(b)

1. Melvin, in contemplation of the bankruptcy proceeding of The Corporation, knowingly and fraudulently transferred to himself property of The Corporation, to wit: the points necessary to obtain the stereo components contained in the orders dated April 20 and 28, 1967, marked Trustee's Exhibits 22 and 23.

2. Specification 1(b) is sustained.

SPECIFICATION 2

3. All of the acts alleged in Specification 2(a), (b), (c), (d), (f), (h), and (i) were not done in contemplation of The Corporation's bankruptcy.

4. No proof was submitted to support Specification 2(e).

5. Specifications (2)(a), (b), (c), (d), (e), (f), (h) and (i) are dismissed.

6. Specification 2(g):

(a) Melvin knowingly and fraudulently caused credit memoranda aggregating some $120,000 to be issued by The Corporation.

(b) Melvin knew that no merchandise listed therein had been or would be returned to it.

(c) The entries in the credit memoranda were false

(d) They affected and related to The Corporation's property.

7. Specification 2(g) is sustained.

SPECIFICATION 3.

8. Specification 3 is dismissed.

SPECIFICATIONS 4 and 5

9. Specifications 4 and 5 are dismissed.

10. Specifications 1(b) and 2(g) having been sustained, the bankrupt's discharge is denied.

Dated: Brooklyn, New York
April 4th 1973

Manuel J. Price
Referee in Bankruptcy

ORDER DENYING DISCHARGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

In the Matter

of

MELVIN LICHT,

Bankrupt.

In Bankruptcy
No. 67-B-668

----------X

At Brooklyn, New York, on the 17th day of April, 1973:

It appearing that Melvin Licht, of 55 Locust Avenue, Cedarhurst, New York, was duly adjudged a bankrupt on July 12, 1967 on a petition filed by him on June 8, 1967, and,

It further appearing that after due notice by mail, objections to the discharge of said bankrupt were filed by Herbert L. Ash, trustee, and after due notice by mail, said objections were heard on June 9, 1972, June 16, 1972, August 9, 1972 and August 18, 1972, and specifications of objections No. 1(b) and 2(g) having been sustained, and Specification 1(a), 2(a), (b), (c), (d), (e), (f), (h) and (i), specification 3, 4 and 5, being dismissed, it is

ORDERED, that the discharge of said Melvin Light be, and it hereby is denied.

MANUEL J. PRICE
Referee in Bankruptcy

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

In the Matter :

67-B-668

of :

MELVIN LICHT, :

Bankrupt. :

FEB 14 1974

----------x

Appearances:

Michael Berman, Esq., 55 Liberty Street, New York City 1005, for bankrupt

Frederick C. Stern, Esq., Hahn, Hessen, Margolis & Ryan, Esqs., 350 Fifth Avenue, New York City 10001, for trustee

COSTANTINO, D.J.

This petition to review arises from the report of the Referee which first, allowed the Trustee in this action to amend two of the specifications of objections to the discharge of the bankrupt, Melvin Licht, and second, sustained those specifications, thereby denying the discharge. The Referee denied all the other specifications.

Specification 1(b) originally read:

> The bankrupt has committed an offense punishable by imprisonment as provided under Title 18, United States Code, Section 152, in that the bankrupt. . . in

> contemplation of the bankruptcy proceeding of John Licht, Inc. knowingly transferred to himself property of John Licht, Inc., to wit: The bankrupt obtained coupons, points, premiums and/or merchandise stamps belonging to John Licht, Inc. and entitling it to various merchandise, and used same to his own benefit and account for the acquisition of, among other things, clothing, carpeting, living room furniture, dining room furniture, television, a typewriter, a stereo outfit, a bar and lamps without paying said corporation consideration therefor.

Specification 2(g) originally read:

> The bankrupt has committed an offense punishable by imprisonment as provided under Title 18, United States Code, Section 152, in that, in contemplation of the filing of the bankruptcy of John Licht, Inc., the bankrupt knowingly and fraudulently falsified or made a false entry in documents affecting or relating to the property or affairs of said John Licht, Inc., to wit: . . . Entries were made in the books of John Licht, Inc., representing returns of merchandise to said Company, none of which was actually received by it.

Before trial the Trustee was asked through Interrogatory 11 propounded to him by the bankrupt's attorney, "The dates of the entries alleged to have been

made in the books of John Licht, Inc., representing returns of merchandise to it, none of which was actually received by it." The answer was, "The alleged false returns referred to are covered by credit memos dated June 20, 1967. . . ."

After the trial the bankrupt attacked the specifications as being defective. As to Specification 1(b) he contended that Section 14c(1) of the Bankruptcy Act, 11 U.S.C. § 32c(1), and paragraph 6 of 18 U.S.C. § 152 require that a transfer be made knowingly and fraudulently to bar a discharge. The proof offered concerning Specification 2(g), the bankrupt asserted, showed that false entries were made after the Corporation had filed its bankruptcy petition (on June 1, 1967), not in contemplation of doing so as the specification alleged.

The Trustee moved to amend the Specifications pursuant to Federal Rule of Civil Procedure 15(b) adopted by Bankruptcy Rule 715. Specification 1(b) was to be amended by adding the words "and fraudulently" after "knowingly" so that it would comply with the statutory language. Specification 2(g) was to be amended by adding

the words "after the filing" so that it would read:

> The bankrupt has committed an offense punishable by imprisonment as provided under Title 18, United States Code, Section 152, in that after the filing of a bankruptcy proceeding by John Licht, Inc., and in contemplation thereof, the bankrupt knowingly and fraudulently falsified or made a false entry in documents . . . .

The bankrupt opposed the motions to amend on several grounds. Initially he asserted that Federal Rule 15 (b) should not apply to bankruptcy proceedings when it would be "inconsistent" with the Bankruptcy Act or the General Orders of Bankruptcy. General Order 37. He cited General Order 32 which requires persons opposing discharge to file specifications on or before a date fixed by the Referee. The bankrupt argued that if the Trustee were permitted to amend his specifications, it would be an extension contrary to the express requirement of General Order 32. The bankrupt claims that the amendment of Specification 1(b) should be denied because of lack of diligence, and the amendment of Specification 2(g) should be denied because to allow the amendment would be in effect adding a new specification which as noted above would be

contrary to General Order 32.

The Referee allowed both the amendments because he felt that to hold the Trustee to his original pleadings would be "a return to the narrow and discredited principals that pleadings are an end in themselves and that they must be couched in specific language irrespective of the merits of the claim or the proof adduced in its support." He cited In re Schlesinger, 31 F.2d 789 (S.D. Tex. 1929), affirmed sub. nom. Schlesinger v. Phillips, 36 F.2d 191 (5th Cir. 1929); In re Finder, 61 F.2d 960 (2d Cir. 1932); and In re Adler, 79 F.2d 840 (2d Cir. 1935), in support of his position.

The bankrupt has sought review of the Referee's report upon the same grounds that he originally opposed the motions to amend. He alleges lack of due diligence in seeking the amendment to correct the obvious error in Specification 1(b), citing Stanley's Incorporated Store No. 3 v. Earl, 28 F.2d 611 (8th Cir. 1928); In re Grossberg, 11 F.2d 329 (S.D. Fla. 1926); and In re Hixon, 93 Fed. 440 (S.D. Iowa, 1899), among other cases, and alleges that amended Specification 2(g) is a new specification, citing

In re Hurowitz, 14 F.Supp. 71 (D.C. Mass. 1935); In re DeCillis, 83 F.Supp. 802 (D.C. Mass. 1949); In re Johnson, 192 F. 356 (D.C.S.D. 1911); Northeastern Real Estate Securities Corporation v. Goldstein, 91 F.2d 942 (2d Cir. 1937); In re Biro, 107 F.2d 386 (2d Cir. 1939); and In re Siegel, 55 F.Supp. 709 (E.D.N.Y. 1944).

It is well settled that new or additional grounds for objecting to discharge may not be added by way of amendment. Stanley's Incorporated Store No. 3 v. Earl, supra; Northeastern Real Estate Securities Corp. v. Goldstein, supra. It is equally well settled, however, that amendments which merely amplify or clarify the original pleadings are permitted. Northeastern Real Estate Securities Corp. v. Goldstein, supra, 1A Collier, On Bankruptcy, ¶ 14.07 at 1290-91 (14th ed. 1973). Further, where the bankrupt is not prejudiced by the amendment because he was sufficiently warned of the facts to be proven before the trial and has impliedly consented to the trial of the issues, then amendment is proper. The conclusion of the court in In re Taub, 98 F.2d 81 (2d Cir. 1938) is applicable to the case before this court:

> The amendment did not present a new ground of objection; it merely cured a defective statement of the old objection and conformed it to the statutory requirements. It caused neither delay nor surprise to the bankrupt. The district judge was clearly correct in allowing it.

Id. at 82.

The Fifth Circuit in In re Sturdevant, 415 F.2d 465 (5th Cir. 1969) considered the applicability of Federal Rule 15(a) to bankruptcy proceedings and said:

> Thus by virtue of General Order 37, the standard to be applied in determining whether or not to allow amendment of an objection to discharge is the standard of Rule 15(a) Fed.R. of Civ.P., which requires that leave to amend be freely given "when justice so requires."

Id. at 467.

From the answer to Interrogatory 11 the bankrupt had notice that the June 20, 1967 memos were the evidence upon which Specification 2(g) was based. Accordingly, taking the standard of Federal Rule 15(a) into account, the court finds that Referee Price was correct in allowing the amendments to Specifications 1(b) and 2(g) and therefore

sustains his report.

On the merits of the Referee's report concerning Specification 1(b), the critical issue presented, aside from the Referee's factual finding, was whether judicial notice could be taken of the file in a related bankruptcy proceeding. It is settled law that courts may judicially notice the records of prior litigation between the same parties before the same court. Shuttlesworth v. Birmingham, 394 U.S. 147 (1969); National Fire Ins. Co. v. Thompson, 281 U.S. 331, 336 (1930) and cases cited therein; Bradford v. Amsterdam, 424 F.2d 282 (2d Cir. 1970); Kamsler v. M.F.I. Corp., 359 F.2d 752 (7th Cir. 1966); Meredith v. Van Oosterhout, 286 F.2d 216 (8th Cir. 1960), cert. denied 365 U.S. 835 (1961); Wharton v. Roth, 263 F.Supp. 922 (E.D.N.Y. 1964); Wallach v. Lieberman, 219 F.Supp. 247 (S.D.N.Y. 1963); 2 Collier On Bankruptcy ¶ 21.03 (14th ed. 1971).

There was sufficient evidence upon which Referee Price could base his findings of fact on Specification 1(b). Accordingly, pursuant to General Order of Bankruptcy 47 the Referee's findings will not be disturbed. Bankruptcy Rule 810.

The only objection that the bankrupt has to Specification 2(g) has been discussed previously, that of the amendment. There were sufficient grounds upon which the Referee's findings could be based. Therefore they will not be disturbed. General Order 47.

The report of Referee Price is affirmed and the bankrupt's discharge is thereby denied.

U. S. D. J.

A 202 Affidavit of Personal Service of Papers H LUTZ APPELLATE PRINTERS INC.

U.S. COURT OF APPEALS:SECOND CIRCUIT

LICHT,

Appellant,

against

ASH,

Appellee.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK *ss.:*

I, Victor Ortega, *being duly sworn,*

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at

1027 Avenue St. John, Bronx, New York

That on the 6 th *day of* June *1974 at* 350 5th Avenue, New York

deponent served the annexed Appellants Appendix *upon*

Hahn, Hessen, Margolis & Ryan-Attorneys for Appellee

the *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the* Attorney(s) *herein,*

Sworn to before me, this 6th

day of June *19* 74

Victor Ortega

Print name beneath signature

VICTOR ORTEGA

Robert T. Brin

ROBERT T. BRIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31 - 0418950
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1975